



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, LRE, OLC, FFT

### Introduction

The Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution (the “Application”) on October 20, 2021. They are seeking:

- cancellation of the One Month Notice to End Tenancy for Cause (the “One-Month Notice”);
- suspension or set conditions on the Landlord’s right to enter the rental unit;
- the Landlord’s compliance with the legislation and/or the tenancy agreement;
- reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 1, 2022. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

The Tenant, the Landlord, and their agent (hereinafter the “Landlord”) attended the hearing and each was provided the opportunity to present oral testimony and make submissions in the hearing. Each party confirmed they received the prepared documentary evidence of the other well in advance. On this basis, the hearing proceeded.

### Issues to be Decided

Is the Tenant entitled to a cancellation of the One Month Notice?

If the Tenant is unsuccessful in their Application, is the Landlord entitled to an Order of Possession of the rental unit?

Is the Tenant entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit?

Is the Landlord obligated to comply with the *Act*, the regulation, and/or the tenancy agreement?

Is the Tenant entitled to reimbursement of the Application filing fee?

### Background and Evidence

The Tenant provided a copy of the tenancy agreement in their evidence. This shows the basic terms of the tenancy agreement. The Tenant signed the agreement on May 17, 2018 for the tenancy starting on June 1, 2018. The basic rent amount of \$2,800 did not increase over the history of this tenancy.

The agreement on page 5 sets out the terms on the Landlord's entry into the rental unit. These reproduce what is set in the *Act* as this is a basic Residential Tenancy Branch-crafted template tenancy agreement. The agreement also sets out that the Tenant is entitled to quiet enjoyment, reasonable privacy, freedom from unreasonable disturbance, and exclusive use of the rental unit.

The Landlord issued the One-Month Notice on October 6, 2021 for the tenancy end-date of December 1, 2021. On page 3 the Landlord indicated they served this to the Tenant via registered mail. The Tenant confirmed this in the hearing.

On page 2 of the document, the Landlord indicated the Tenant had "seriously jeopardized the health or safety or lawful right of another occupant or the landlord." The Landlord set out details:

- after "numerous requests" the Tenant did not allow the Landlord or their realtor or agent into the home to inspect the condition prior to listing the home for sale
- they posted their access request on September 29, 2021 for access on October 4
- when the Landlord arrived at the rental unit on October 4, the police were present and the Landlord was "denied access"
- at that time the Landlord issued a warning, and their second access request to the Tenant, in person, for access on October 6
- via email on October 5, the Tenant stated they declined the Landlord's access on October 6.

The Landlord provided their summary statement in that details section: "The tenants are repeatedly declining access due to consistently [sic] changing reasons (mainly Covid)."

In their evidence, the Landlord provided copies of their written notices and the warning issued to the Tenant. This includes the September 29, 2021 Letter of Authorization, wherein the Landlord informed the Tenant that two agents "are authorized to request access into your home and on property for the purpose of selling my property." This document also provided that the reasons for entry included photographs, showings, open houses and inspections.

The notice of entry dated September 29 contained the purpose for the entry, and the date and time. The Landlord provided a date of October 3; however, they changed this to the next following weekday, October 4. The Landlord in their written submission specified that on September 29 the Tenant would not accept the document handed to them and would not allow its posting on the door. Instead, the Landlord posted the document on the front window of the house.

Later that same day, the Tenant emailed to the Landlord. They requested the Landlord's "COVID-19 Safety Protocols" and denied access until these were provided. They also requested names and phone numbers for contact tracing, and more time to prepare the house. They stated: ". . . it's up to you folks to cooperate and de-escalate" and "I will continue to insure [sic] the safety of my household at all cost."

The Landlord responded on October 2. They set out the "Covid protocol" measures they would ensure during their entry. These were 7 detailed points. On October 3 the Tenant messaged to say their attorney would contact the Landlord.

The Landlord attended on October 4 to find the police present when they arrived. In the hearing, the Landlord stated they expected this, so they had a warning letter and second notice of entry prepared. In their written summary, they stated the Tenant had called the police for assistance, and the officer did not allow the Landlord on the property "as per the tenants request." The officer's report provided that the Tenant had no knowledge of the Landlord's "game plan" and "nor was there any discussion regarding the matter."

The warning letter dated October 4 is the Landlord informing the Tenant that if their access is not allowed, they will serve the Tenant a notice to end the tenancy. The second notice of entry, dated October 4, sets out the purpose of the entry, and the date and time, for October 6.

The Tenant responded via email on October 4. They stated the "letter of authorization" form the Landlord gave them on September 29 is "illegal." They stated the same for the Landlord's

notice of entry dated October 4. After this, the Landlord issued another Letter of Authorization to the Tenant, stating their agent is authorized to receive issues or concerns directly from the Tenant.

The Tenant provided a written statement, evidence in the form of photos of the Landlord's visit, and copies of the Landlord's notices of entry and messages between the parties. In their written statement, the Tenant described the visit on September 29 when the Landlord visited, recording their interaction with the Tenant. They tried to contact the local real estate board to speak to the agent's managing broker. Their email to the managing broker is in their evidence. They accused the Landlord (in particular, their agent) of bullying and harassment, and a lack of professional conduct. They requested any further visit be undertaken with their own attorney present, no pictures, and "the listing will be marketed as virtual only".

That manager replied on October 1, instructing the Tenant to contact a lawyer and speak separately to the Landlord. After this the Tenant made efforts to reschedule the Landlord's entry; however, the Landlord would not agree to this.

The officer was present on October 4 and observed the Landlord serve the next entry notice to the Tenant in person. The day after this, the Tenant requested more time so they could obtain legal advice. The officer attended again on October 6; however, the Landlord did not attend and instead emailed the other documents to the Tenant. The Tenant then consulted with a lawyer on October 25; the invoice for this is in their evidence.

In their evidence, the Tenant also provided their email to the Landlord dated October 5. In this message, they made a summary timeline of events, they proposed having "1-3 consultations" with a lawyer, for the purpose of "preparing documents and devising a plan or proposal and submit to the owner for review." They set out strictly that "Access for October 6 is declined", with the reason being they need to have lawyers from both sides present any time the Landlord is present inside the home. The Tenant did provide a "several options for [the Landlord] to review on October 20, 2021."

In the hearing the Tenant re-stated that they were not trying to be difficult in this matter. They were simply asking for more time to prepare for the Landlord's entry into the unit. They presented that they tried to de-escalate the situation; however, at the initial September 29 visit, the Landlord was recording the interaction on their phone, and the agents who approached did not introduce themselves.

The Tenant stated clearly in the hearing: "we wanted to know our legal rights with respect to COVID, and to have a 3<sup>rd</sup> party there to witness if the Landlord does visit inside." They

reiterated that they attempted to contact the Landlord a total of seven times to have a rescheduled entry to the rental unit, but the Landlord would not accommodate this. In sum, the Tenant stated, “we just wanted clarity and a non-biased approach on how the property is sold.”

In response to this, the Landlord presented that there was a string of dialogue preceding the September 29 visit to the property. They did not provide these in their evidence. The simple fact of the matter, as stated by the Landlord, was that they were denied access twice by the Tenant, with fair notice of their entry being in place.

### Analysis

The *Act* s. 47 provides various grounds for which a landlord may end a tenancy by issuing a One-Month Notice. Specifically, s. 47(1)(d)(ii) defines actions that “seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.”

Important also to the consideration of ending a tenancy is the form and content requirements of the One-Month Notice, as set in s. 52. This specifies “a notice to end a tenancy must be in writing and must . . . (d). . . state the grounds for ending the tenancy . . .”

In this matter, the onus is on the Landlord to prove they have cause to end the tenancy. On my review, the Landlord has not provided sufficient evidence to show the actions of the Tenant *seriously jeopardized* their rights or interests. I find there was a significant amount of difficulty and the Tenant’s actions had a detrimental impact on the landlord-tenant relationship; however, the evidence does not show it placed the rights or interest of the Landlord in serious jeopardy.

I find this specific reason in s. 47(1)(d)(ii) is more reserved for a situation where there is some infringement on the rights of the Landlord that represents a serious economic shock, danger of severe damage to the property, or an impact on the health or safety of others. The Landlord did not provide sufficient evidence to show this; there was no information on how the Tenant’s actions even impeded the sale of the property or altered the necessary steps thereof.

Aside from this, I find the actions of the Tenant are those that significantly interfered with or unreasonably disturbed the Landlord. That is a separate reason that was *not* indicated by the Landlord on the One-Month Notice; therefore, with strict regard to s. 52, I find the Landlord did not indicate the correct reason on the form, and this invalidates the One-Month Notice.

I deem the following actions of the Tenant caused interference or disturbance for the Landlord:

- not accepting documents in person or posted to the door of the rental unit;
- demanding signed COVID-19 safety protocols;
- informing the Landlord that they would only be receiving communication from the Tenant via counsel (even though this never happened);
- request for both parties' representation by counsel when the Landlord enters to the rental unit, with neither a legal basis nor violation of the legislation by the Landlord;
- police presence for the Landlord's attendance at the property;
- labelling the Landlord's form usage "illegal" when it is not, with no evidence that this claim was based on an informed opinion;
- demands to the real estate broker on how the sale of the property may be conducted.

I also note the Tenant's intense mood during the dispute resolution hearing. Presumably this was based on strong emotions related to public health measures; however, I find this mode caused difficulties in the parties' communication. I find it more likely than not that this is the primary reason the Tenant cites the Landlord as being non-responsive to other options for re-scheduling a Landlord entry. I also refer to the number of emails from the Tenant that take a severe tone, showing a defiant position and lack of openness and collaboration.

I also note these actions of the Tenant are potentially causing financial difficulties or monetary loss for the Landlord. The Landlord is well within their rights to apply for monetary compensation for financial difficulties that result from a breach of the *Act* or the tenancy agreement involving their inability to enter the rental unit as they have the legal right to do.

By s. 29 of the *Act*, a landlord must not enter a rental unit unless there is an emergency, a tenant gives permission at the time of entry, or the landlord gives the tenant written notice not less than 24 hours in advance. A written notice must state the purpose of the entry which must be reasonable, and give the date and time intended for the entry.

The Tenant also applied for a suspension or restriction on the Landlord's right to enter the rental unit. I find the Tenant has not presented valid concerns for a restriction on the Landlord's right to enter. The Landlord provided ample, legally correct notice to the Tenant of their intention to enter the rental unit. The Tenant raised concerns about public health measures in place; however, I find the Landlord responded adequately to these concerns in writing, and the Tenant was well aware of the Landlord's attention to that matter. Aside from this, the Tenant presented no evidence of the Landlord flaunting these public health measures, or not acknowledging their own queries and concerns on that serious matter.

Likewise, while the Tenant raised issues on their Application concerning the Landlord's harassment, bullying, and making false accusations, I find no evidence of this. The Tenant raised their concern about the Landlord recording the interaction when they arrived on September 29. While this can be intimidating, it is not a reason to restrict or suspend the Landlord's right to enter, minus evidence of other more serious conduct. There is no evidence of threats, or other levels of intimidation by the Landlord present in the Tenant's evidence. Conversely, the Landlord faced the situation of police presence at the property when they visited, and veiled threats of legal action from the Tenant in the form of their request for counsel's presence on any live interaction.

For these reasons, I dismiss the Tenant's request for limitations on the Landlord's right of entry, without leave to reapply.

The Landlord provided full and correct notice to the Tenant. It is not "illegal" as the Tenant states. Additionally, I find the Landlord provided information on their public health protocols when the Tenant made that request. The Tenant presented no public health mandate that states a landlord must provide that information to a tenant in a signed document. While the Tenant pleads for the Landlord's compliance with the legislation and/or the tenancy agreement in line with health and safety issues, I find there is no marked conduct of the Landlord that shows they were not aware of the needs for certain protocols to be in place when entering the rental unit. Minus evidence to the contrary, I find the Landlord complied with the *Act* and the tenancy agreement in all respects.

The Landlord also provided a proper notice to the Tenant of their agent's authority to act on their behalf. The Tenant evidently has other concerns with the Landlord's agent being present. This is directed at one individual in particular. An alleged conflict of interest, as stated on their Application, is not governed by the *Act*, and there is no statutory bar to the Landlord hiring an agent of their choice to handle matters on their behalf. This was stated clearly to the Tenant in writing, delivered on September 29, and again on October 6. I find other safety concerns from the Tenant are unfounded, again with no evidence of threats or other conduct.

For these reasons, I dismiss the Tenant's request for the Landlord's compliance with the *Act* and/or the tenancy agreement. There is no evidence of a breach or violation by the Landlord; and no evidence showing there will be going forward.

In sum, the Tenant had no sufficient reason to decline the Landlord's entry. The Landlord has the right to enter the unit with proper notice, and even has the right make inspections on a monthly basis as per s. 29(2). On this distinct issue, I find the Landlord is in compliance with

the *Act* and the tenancy agreement; therefore, there is no legal reason to restrict or suspend their right to enter the rental unit.

Because the Tenant was moderately successful in this Application, I award one-half of the Application filing fee to them. I authorize the Tenant to withhold the amount of \$50 from one future rent payment.

### Conclusion

For the reasons above, I order the One-Month Notice issued on October 6, 2021 is cancelled and the tenancy remains in full force and effect. I dismiss the other portions of the Tenant's Application, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: March 4, 2022

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Residential Tenancy Branch