



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC**

### Introduction

This hearing was convened as a result of the Tenants' application under the *Residential Tenancy Act* (the "Act") for cancellation of a One Month Notice to End Tenancy for Cause dated December 13, 2021 ("1 Month Notice") pursuant to section 47 of the Act.

The Landlord's agents ("AC" and "JA") and the two Tenants ("AW" and "KG") attended the participatory hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

KG stated the Tenants served the Notice of Dispute Resolution Proceeding ("NDRP") on the Landlord by Canada Post ExpressMail. KG provided the Canada Post tracking number for service of the NDRP on the Landlord to corroborate his testimony. AC acknowledged the Landlord received the NDRP. I find the NDRP was served on the Landlord in accordance with the provisions of section 89 of the Act.

AC stated the Landlord served its evidence on the Tenants' door on March 14, 2022. KG acknowledged the Tenants received the Landlord's evidence. I find the Landlord's evidence was served on the Tenants in accordance with the provisions of section 88 of the Act.

### Issues to be Decided

- Are the Tenants entitled to cancellation of the 1 Month Notice?
- If the Tenants are entitled to cancellation of the 1 Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenants' application and my findings are set out below.

The parties agreed the tenancy commenced on November 1, 2021, for a fixed term ending on October 31, 2022, with rent of \$1,550.00 payable on the 1<sup>st</sup> day of each month. The Tenants are responsible for paying 30 of the utility bills. The Tenants were required to pay a security deposit of \$775.00 by October 30, 2021. AC stated the Landlord received payment of the security deposit and confirmed the Landlord was holding the security deposit in trust on behalf of the Tenants.

AC testified the rental unit is located in a house with three levels. AC stated the Tenants occupy the middle floor while the upper and lower floors are occupied by different tenants.

AC stated the 1 Month Notice was served on the Tenants' door on December 14, 2021. AC submitted a signed and witnessed Proof of Service on Form RTB-34 certifying the 1 Month Notice was served on the Tenant's door on December 14, 2021, to corroborate her testimony on service. I find the 1 Month Notice was served on the Tenants in accordance with section 88 of the Act. Pursuant to section 90 of the Act, I find the Tenants were deemed to have received the 1 Month Notice on December 17, 2021.

The 1 Month Notice stated the cause for ending the tenancy was the tenant or a person permitted on the property by the tenant has significantly interfere with or unreasonably disturbed another occupant or the landlord. The details of the events for cause stated in the 1 Month Notice are:

On November 2<sup>nd</sup> 2021 at 5:55 pm, the upper floor tenants heard a girl "wailing and crying for help" and described this when notifying us that they had called the police for assistance since they felt unsafe. On December 1<sup>st</sup> 2021 at 5:08 pm, we were notified by the next door unit that they heard a girl screaming and yelling for help, therefore, they called the police to make sure [AW] is safe. On December 6<sup>th</sup>, 201, we received a call from a Community Mental Health Worker from [location of Mental Health Unit] who is responsible for [AW's] case advising us of the tenant's condition from a mental health perspective.

Two noise complaints (with police reports) have happened and although [AW] spoke to the police afterwards, we are concerned that this will happen again in this living environment. It is also causing stress for the neighbours in the same house since they are worried that this would happen again as well.

AC provided testimony on the details of the two incidents described in the 1 Month Notice. JA stated that, after the first incident on November 2, 2021, she called AW to see if she was okay. JA also stated that, after the second incident on December 1, 2021, she talked to AW and reminded her that it was the second time she had disturbed other occupants of the residential property. AC submitted a letter dated January 28, 2022 ("Complaint Letter") from two tenants living in another rental unit in the building who confirmed details of the incident in November 2021. The two tenants stated in the Complaint Letter that they often "hear screaming from the Tenants' unit as both [Tenants] are screaming" but the Complaint Letter did not provide any details on the times and dates of those disturbances.

AC stated that, although JA had given AC verbal warnings regarding the noise disturbances, the Landlord had not given the Tenants a formal written warning that any further noise disturbances could result in the Landlord serving them with a One Month Notice.

KG stated the Tenants were unaware there had been noise complaints made by the other tenants living in the residential property. KG stated the move into the rental unit had been very stressful on AW and she had become "overwhelmed" on November 2, and December 1, 2022. KG stated the two incidents were not related to any form of spousal abuse which was corroborated by AW. KG stated the Tenants were now getting along with the other tenants in the building. KG stated that, to his knowledge, there had been no further reports of disturbance since December 2, 2021. AW stated she felt that the complaints from other tenants and the service of the 1 Month Notice on the Tenants was based on discrimination related to her mental illness.

### Analysis

Subsections 47(1)(d)(i) and sections 47(2) through 47(5) of the Act state:

- 47(1)** A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:  
[...]

- (d) the tenant or a person permitted on the residential property by the tenant has
  - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- [...]
- (2) A notice under this section must end the tenancy effective on a date that is
  - (a) not earlier than one month after the date the notice is received, and
  - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
  - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit by that date.

AC testified the Landlord served the 1 Month Notice on the Tenants' door on December 14, 2021. Pursuant to section 90 of the Act, the Tenants were deemed to have received the 1 Month Notice on December 17, 2021. Pursuant to section 47(4) of the Act, the Tenants had until December 28, 2021, being the next business day after the 10-day dispute period, to make an application for dispute resolution to dispute the 1 Month Notice. The records of the RTB disclose the Tenants made his application on December 23, 2021. Accordingly, the Tenants made their application to dispute the 1 Month Notice within the 10-day dispute period required by section 47(4) of the Act.

AC stated AW disturbed other occupants of the residential property on November 2 and December 1, 2021. JA stated she had spoken to AC after both incidents and warned her about disturbing the other tenants. AC admitted the Landlord did not serve the Tenants with a written warning that any further disturbance could result in the Landlord serving the Tenants with a One Month Notice to End Tenancy.

KG acknowledged AC had caused disturbances on both November 2 and December 1, 2021. KC stated the stress of the move into the rental unit had overwhelmed AC on those two dates. KG stated the Tenants were now getting along with the other tenants in the building. KG stated that, since the second incident on December 1, 2021, he was unaware of any further complaints to the Landlord regarding the Tenants.

Subsection 47(1)(d)(i) of the Act requires that a tenant significantly interfere with or unreasonably disturb another occupant or the landlord of the residential property. It is undisputed that AC caused a disturbance on two occasions. As such, I must interpret the meaning of the adjectives “significantly” and “unreasonably” and determine whether the interference or disturbance caused by AC on those two occasions reached the threshold that would give the Landlord cause to end the tenancy. The two incidents occurred during the day. The tenants who wrote the Complaint Letter indicated that there was continuing shouting between the Tenants but they did not provide times, dates or details of those disturbances. As neither of those tenants were called by the Landlord as witnesses for the hearing, I do not have the benefit of evaluating whether the Tenants caused significant interference or unreasonable disturbance to those two tenants. As a result, I have placed little weight on the Complaint Letter.

I also note that the Landlord did not serve the Tenants with a written warning letter, after the incident on November 2, 2021 at 5:55 pm that would have alerted the Tenants to the risk of the Landlord serving them with an eviction notice if further incidents occurred. Furthermore, instead of serving the Tenants with a written warning letter after the incident on December 1, 2021 at 5:08 pm, the Landlord served the Tenants with the 1 Month Notice. The failure of the Landlord to give a written warning notice to the Tenants after the first incident on November 2, 2021 suggests, in my view, that the disturbances were not sufficiently “significant” or “unreasonable” to warrant the Landlord giving a written warning notice. After evaluating all the testimony and evidence, I find that the Landlord has not met the threshold necessary to demonstrate the two disturbances caused by AW significantly interfered with or unreasonably disturbed another occupant or the landlord.

I find the Landlord has not provided sufficient evidence to prove, on a balance of probabilities, that there is cause for ending the tenancy pursuant to subsection 47(1)(d)(i) of the Act. Based on the above, I cancel the 1 Month Notice and the tenancy continues until ended in accordance with the Act.

Conclusion

The 1 Month Notice is cancelled and of no force or effect. The tenancy continues until ended in accordance with the provisions of the Act.

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

Dated: April 6, 2022

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Residential Tenancy Branch