



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Code**            **CNC**

### **Introduction**

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) to seek an order cancelling a One Month Notice to End Tenancy for Cause dated January 31, 2022 (“1 Month Notice”) pursuant to section 47 of the Act.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 10:24 am in order to enable the Tenant to call into this teleconference hearing scheduled for 9:30 am. The Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding (“NDRP”). I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

The Landlord stated the Tenant did not serve him with the NDRP. The Landlord stated he received an automated message from the Residential Tenancy Branch (“RTB”) advising the hearing was being held today. The Landlord stated he called the RTB and was provided with a courtesy copy of the NDRP. The Landlord stated he wanted to proceed with the hearing. I find the Landlord was sufficiently served with the NDRP pursuant to section 71(2)(b) of the Act.

### **Preliminary Matter – Effect of Non-Attendance by Tenant**

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* (“Rules”) state:

### **7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of the party, or dismiss the application, with or without leave to re-apply.

### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Given the Tenant did not attend the hearing before it concluded at 10:24 am, I dismiss the Application without leave to reapply pursuant to Rule 7.3 of the Rules. As the Tenant did not attend the hearing, Pursuant to Rule 7.4 of the Rules, I will not consider any of his evidence except for the copy of the 1 Month Notice he submitted to the RTB with the Application.

Rule 6.6 of the Rules states:

### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Notwithstanding I have dismissed the Application, the Landlord must nevertheless prove the cause for ending the tenancy pursuant to the 1 Month Notice.

Issue to be Decided

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 Application and my findings are set out below.

The Landlord stated the tenancy agreement was between the Tenant, another person ("AA") and the Landlord. The Landlord stated the tenancy commenced on June 15, 2020, for a fixed term ending June 14, 2021, and continued on a month-to-month basis. The Landlord stated the Tenant and AA are required to pay \$1,150.00 on the 1<sup>st</sup> day of each month. The Landlord stated the Tenant and AA paid a security deposit of \$575.00 that the Landlord is holding in trust on behalf of the Tenant and AA. The Landlord stated he had received a text from the Tenant on March 20, 2022 in which the Tenant stated he moved out of the rental unit and left his key. The Landlord stated he has entered into a new tenancy agreement with AA for the rental unit.

The Landlord stated he served the 1 Month Notice on the Tenant in-person on January 31, 2022. Based on the undisputed testimony of the Landlord, I find the 1 Month Notice was served on the Tenant in accordance with the provisions of section 88 of the Act.

The 1 Month Notice stated the reason for ending the tenancy was the Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord. The details of the cause for ending the tenancy provided in the 1 Month Notice is "Court file number [file number]. Controlled Drugs and Substances Act – 5(2) Possession for the purpose of trafficking. Sentenced Nov 18, 2021."

The Landlord stated the Tenant was caught with three ounces of fentanyl and, perhaps, heroin. The Landlord stated the Tenant was charged and convicted. However, the Landlord stated the arrest did not occur on the premises. The Landlord stated the Tenant sent him a "snapshot" of the description stating "on August 6, 2022 that stated:

Constable [B] was conducting patrols when she located [Tenant's car] parked in the driveway of [address of the residential property] which Constable [B] knows to be the residence to be the residence of [names of two tenants of upper rental unit], known to be involved in the drug trade. At 1805 hours, Constable [T] and Constable [B] set up surveillance on [Tenant's car]. A few minutes later, members observed the [Tenant's car] depart the residence. Constable B and Constable T followed the [Tenant's car] and observed him picking up a younger female with bleach blond hair with blue tips.

When I asked, the Landlord testified the Tenant never admitted to him to dealing drugs from the residential property. The Landlord stated he had never observed the Tenant dealing drugs on the residential property. However, the Landlord stated that, while the Tenant was under house arrest, he was adversely affected the quiet enjoyment, security and safety of the other occupants of the residential property. However, the Landlord did not submit any evidence, or call any witnesses, to corroborate his testimony that the Tenant was adversely affecting the quiet enjoyment, security and safety of other occupants.

### Analysis

Subsection 47(1)(e) and section 47(4) of the Act states:

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

[...]

- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
  - (i) has caused or is likely to cause damage to the landlord's property,
  - (ii) *has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
  - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

- (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.*

[emphasis in italics added]

The Landlord stated he served the Tenant in-person with the 1 Month Notice on January 31, 2022. Pursuant to section 47(4), the Tenant had until February 10, 2022, being the last day of the 10-day dispute period within which the Tenant was entitled to make an application for dispute resolution to dispute the 1 Month Notice. The Tenant made the Application on January 31, 2022. As such, the Tenant made the Application within the 10-day dispute period.

*Residential Tenancy Policy Guideline 32* ("PG 32) provides clarification on relevant issues as to the meaning of "illegal", what constitutes "illegal activity" and the circumstances under which termination of the tenancy should be considered. PG 32 states in part:

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

*A tenant may have committed a serious crime such as robbery or physical assault, however, in order for this to be considered an illegal activity which justifies issuance of a Notice to End Tenancy, this crime must have occurred in the rental unit or on the residential property.*

[emphasis in italics added]

The Landlord testified the Tenant never admitted to dealing drugs from the residential property. The Landlord stated he never observed the Tenant dealing drugs on the residential property. The Landlord stated that while the Tenant was under house arrest, he was adversely affecting the quiet enjoyment, security and safety of the other occupants of the residential property. The Landlord did not submit any evidence, or call any witnesses, to corroborate his testimony that the Tenant was adversely affecting the quiet enjoyment, security and safety of other occupants of the residential property.

In order to show cause under section 47(1)(3)(ii), the Landlord must demonstrate two things. The Landlord must firstly demonstrate there has been an illegal activity by the Tenant on the residential property and, if that is demonstrated, then the Landlord must demonstrate it has adversely affected the quiet enjoyment, security and safety of another occupant of the residential property.

Based on the undisputed testimony of the Landlord, I find that the Tenant adversely affected the quiet enjoyment, security and safety of another occupant of the residential property while the Tenant was under house arrest. However, I find that Landlord has not demonstrated, on a balance of probabilities, that the Tenant has engaged in illegal activity as that phrase is used in section 47(1)(3)(ii) of the Act. As such, the Landlord has not demonstrated the Tenant has both engaged in (i) an illegal activity and (ii) that the illegal activity had an adverse affect on the quiet enjoyment, security and safety of another occupant of the residential property.

Based on the foregoing, I find that the Landlord has not established cause to end the tenancy pursuant to section 47(1)(3)(ii) of the Act and I dismiss the Application. The tenancy continues until it is ended in accordance with the provisions of the Act.

Conclusion

The Application is dismissed. The tenancy continues until it is 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: May 17, 2022

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Residential Tenancy Branch