



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied on January 13, 2022 for an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord and to recover the cost of the filing fee.

The parties listed on the style of cause page of this Decision attended, the hearing process was explained to the parties, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited. All parties provided affirmed testimony they were not recording the hearing.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Preliminary and Procedural Matters-

At the outset of the hearing, the person attending the hearing with the tenant, CJ, identified herself as “assisting” the tenant. CJ did not identify herself as an agent or advocate. During the hearing, CJ referred to the tenant as a client, then, when questioned, said the tenant was not a client. Neither CJ nor the tenant were ever forthcoming about the true role or relationship between the parties.

It must be noted that the landlord testified first in the hearing, the tenant provided a response to the landlord’s evidence, and the landlord offered a brief rebuttal.

When offered a chance to provide a brief surrebuttal to the landlord, CJ immediately said she would do so on the tenant’s behalf. After that, the tenant then wanted to provide her own surrebuttal. I declined to allow the tenant this opportunity, as CJ said she would do so.

#### Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support their Notice?

Is the tenant entitled to an order cancelling the Notice?

#### Background and Evidence

This tenancy began on October 12, 2021, monthly rent is \$1,200 and the tenant paid a security deposit of \$600.

The landlord issued the tenant a 1 Month Notice, which is the subject of this dispute.

A copy of the Notice was provided, which shows that it was dated January 4, 2022, for an effective date of January 31, 2022. The evidence was that the Notice was posted on the tenant’s door.

The 2 causes listed on the 1 Month Notice are:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Tenant or a person permitted on the property by the tenant put the landlord's property at significant risk.

The "Details of Cause" section listed on the 1 Month Notice states as follows:

Details of the Event(s):

[redacted] moved in on October 12th 2021 she complained about mould due to her health so she had it analyzed and it came out well within health specs. [redacted] had a friend inspect dwelling after she moved in and gave her a list of things to do to suit her so I had a contractor ( A retired Building Inspector) come in and do the necessary repairs she wanted. She then complained about the wood stove after saying she loved wood stoves so I did repairs on the stove to satisfy her. I am in the process of changing to natural gas earliest Contractor is booked for February 7th 2022. She still will not use wood stove because not to her health standards. I supplied extra electric heaters and also offered her a furnished room in the big house on the property which she declined. She is continuously sending Landlord emails to improve building and surrounding property to suit her needs. I have told that this place does not suit her special needs and will never meet her exceptional standards. I have sent a mutual agreement form RTB 8 to end tenancy on Dec 29/2021.

[Reproduced as written except for anonymizing personal information to protect privacy]

In support of their Notice, the landlord provided the following evidence –

The landlord testified that as soon as the tenant moved into the rental unit, she began making complaints about the state of the rental unit. The tenant first complained about the mould. A mould test was conducted and the mould levels were found to be in an acceptable range.

The landlord said they both agreed the rental unit was not suitable for the tenant and that the tenancy should end. The landlord sent the tenant a mutual agreement to end the tenancy form, but the tenant refused to sign the document.

The landlord said that the stove is old, but the tenant did not want to use it, and instead, wanted to install her own, which he did not allow.

The landlord submitted that he intended to convert the stove to propane or natural gas, but could not secure a tradesman to install until February 2022. The landlord submitted that the tenant went to the local council and "screwed up" the contractor from getting a permit and the work could not started on February 7, 2022, as planned.

The landlord submitted that since the tenant moved in, there have been nothing but constant complaints about the state of the rental unit and requests for repairs. The landlord submitted that the rental unit was not up to the tenant's standards and that she should just leave.

Tenant's response –

The tenant said her doctor encouraged her to get a mould test for the rental unit.

The tenant submitted that she believed the main issue was heating. The tenant said her pastor helped her find a wood stove contractor. The contractor found mould and told the tenant not to use the stove.

The tenant submitted that she cannot use the wood stove and the space heaters got her through the winter.

In her written evidence, the tenant provided a long list of repairs she wanted made. The tenant submitted statements from tradespersons about making the repairs or recommending repairs. In her written statement, the tenant spoke about making emergency repairs, paying up front, and collect the costs from the landlord later.

Analysis

I have carefully reviewed and considered the relevant oral and written evidence submitted by the parties.

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. Where a tenant applies to dispute a 1 Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

The Notice in this dispute was issued under sections 47(1)(d)(i) and (iii). Having reviewed a copy of the Notice, I find it was on the RTB approved form with content meeting the statutory requirements under section 52 of the Act.

I find the basis of the landlord's Notice was due to the multiple complaints about the state of the rental unit and the requests for repairs, beginning shortly after the tenant

moved into the rental unit. The tenant also had tradespersons into the rental unit apparently consulting about making repairs to the rental unit.

While the immediate and repeated complaints and requests for repairs made by the tenant is concerning, I find this conduct did not arise to such a level as to constitute conduct that would meet the requirement of “significantly interfered” with or “unreasonably disturbed” the landlord.

I also find the landlord submitted insufficient evidence to show that the tenant put the landlord’s property at significant risk. There were none listed in the Details of Cause(s) listed on the Notice.

I find on a balance of probabilities that the landlord has not met the burden of proving the grounds on which the Notice was issued. Accordingly, I **order** that the Notice dated January 4, 2022, is **cancelled**, and it is of no force or effect. I order the tenancy continue until it is ended in accordance with the Act.

As a result, I grant the tenant’s application seeking cancellation of the Notice. For this reason, I grant the tenant recovery of the filing fee of \$100. The tenant is authorized and directed to deduct \$100 from a monthly rent payment in satisfaction of this monetary award.

### **Orders and Cautions to the tenant –**

Section 32 of the Act, a landlord must provide and maintain the residential property in a state of decoration and repair that:

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the **age, character and location of the rental unit**, makes it suitable for occupation by a tenant.

*[My emphasis]*

The tenant is therefore informed that the landlord is not obligated to bring the rental unit to a higher standard.

Although I have cancelled the Notice in this case, due to my findings herein, the tenant is now informed that continued and unfounded requests for repairs to bring the rental unit to a higher standard may form the basis of the landlord issuing the tenant another 1

Month Notice, and if he chooses, the landlord may use this Decision as support for that Notice.

I also inform the tenant that had the landlord submitted sufficient evidence that she interfered with his ability to have the contractor make the repairs on February 7, 2022, due to possible interference with the local council, I would have found sufficient evidence to support the Notice. I caution the tenant to not interfere with the landlord's business in the future.

After reading the tenant's written evidence regarding making emergency repairs to the rental unit and collecting from the landlord later on, I also find it necessary to caution the tenant that it is not on the tenant to make such repairs without following the requirements of section 33 of the Act.

### Conclusion

The tenant's application is granted. The Notice issued by the landlord is cancelled and is of no force or effect.

The tenancy has been ordered to continue until ended in accordance with the Act.

The tenant has been granted recovery of the filing fee of \$100 and directed to deduct this amount from a monthly rent payment.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 01, 2022

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Residential Tenancy Branch