



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LRE, CNE

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 14, 2021 (the “Application”). The Tenant applied as follows:

- To suspend or set conditions on the Landlord's right to enter the rental unit
- To dispute a One Month Notice to End Tenancy for Cause dated October 08, 2021 (the “Notice”)

This was an adjourned hearing. The first hearing occurred February 25, 2022, and an Interim Decision was issued the same date. This Decision should be read with the Interim Decision.

The Tenant appeared at the second hearing with L.H. as a witness. L.H. was not involved in the hearing. I did not hear from L.H. because the Tenant sought to call L.H. about the Landlord harassing the Tenant which I did not find sufficiently relevant to the dispute of the Notice. R.R. and J.G. appeared at the hearing for the Landlord. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties and witnesses provided affirmed testimony.

Service was addressed in the Interim Decision.

As stated in the Interim Decision, I am only considering the dispute of the Notice.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all evidence provided. I have only referred to the evidence I find relevant in this decision.

### Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

### Background and Evidence

A written tenancy agreement was submitted. The tenancy started November 01, 2017.

The Notice was submitted. The grounds for the 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 and put the Landlord's property at significant risk
2. Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has or is likely to damage the Landlord's property
3. Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit or property
4. Tenant has not done required repairs of damage to the unit or property
5. Breach of a material term

The details of cause on the Notice state:

Tenant has damaged suite and landlord property within and has been unable to meet sanitary standards. Letters issued: Final Letter issued Oc. 8, 2021. Breach Letter for Refusal of Mice Treatment July 21, 2021. Pest Inspection Results Letter May 7, 2021, Breach Letter for Failed Pest Inspection September 15, 2020.

The parties agreed the Notice was served, and received by the Tenant, October 08, 2021.

The Landlord issued the Notice due to damage, clutter and unsanitary conditions in the rental unit. In their written submissions, the Landlord outlines damages in the unit observed September 15, 2021, including painting issues, a broken window, linoleum being installed, closet doors being removed as well as electrical plates and exhaust fan filters missing. The Landlord states that it will cost a minimum of \$5,350.00 to fix the damage in the unit.

The Landlord states that the rental unit is too cluttered to perform inspections. The Landlord also refers to an issue in December of 2020 when the Tenant left large items in common areas of the building which the Landlord submits was a health and safety hazard.

Part of the Landlord's position is that the Tenant causes noise disturbances to other tenants of the building when the Tenant attempts to address the damage, clutter and unsanitary conditions in the rental unit.

R.R. testified as follows. The Landlord has problems conducting inspections of the rental unit because the Tenant is not prepared for them. The Tenant is causing a significant interference with other tenants by disturbing them when the Tenant is attempting to address the damage, clutter and unsanitary conditions in the unit prior to inspections. The Landlord receives many complaints about the Tenant from other tenants, all of which relate to the Tenant attempting to address the condition of the unit. The Tenant has put the Landlord's property at significant risk due to the amount of damage in the unit. The illegal activity noted in the Notice is noise disturbances. The Tenant has breached terms 15 and 40 of the tenancy agreement. The Tenant has been given sufficient time to address the issues outlined in the letters sent to the Tenant but has not done so.

Witness A.J. testified about the noise they hear coming from the Tenant and rental unit late at night. A.J. testified that the noise occurs every night and they cannot sleep due to the noise.

Witness S.D. testified that the Tenant brings items into the building and rental unit at night and the noise associated with this disturbs them. S.D. testified that they have

raised a concern about bed bugs with the Tenant because the Tenant is bringing items into the building.

The Landlord relies on terms 15, about repairs, and 40, about pest control, in the tenancy agreement as a basis for the Notice. The Landlord also relies on sections 32 and 47 of the *Residential Tenancy Act* (the “Act”).

The Landlord submitted the following relevant documentary evidence:

- Ten photos of the rental unit
- Letters from the Landlord to the Tenant about the Tenant breaching the tenancy agreement and *Act* in relation to damage in the rental unit, unsanitary conditions, refusing entry for pest treatments, clutter and leaving items in common areas of the building which poses a risk of pest issues and a fire hazard

I note that I have only outlined the evidence relevant to the Notice and issues specifically noted on it because the issue before me is whether the Landlord had grounds to issue the Notice, at the time it was issued, on the basis set out in the Notice. The Landlord submitted documentary evidence that is not outlined above because it is not relevant to the issue before me in that either the subject matter does not relate to the issues outlined in the Notice or the date of the evidence is subsequent to the Notice being issued.

The Tenant testified as follows. The Tenant did not have problems in the building until the new maintenance manager started and the Tenant and manager had an issue over a key. Further, the manager seems to have a personal issue with the Tenant. Some of the damage noted by the Landlord in their materials is present in the rental unit; however, it is either normal wear and tear or due to the poor quality of the unit and materials used in the unit. The Tenant has lived in the unit for five years and therefore there is wear and tear in the unit; however, there is no major damage. The monetary amount of the damage claimed by the Landlord in their materials is not accurate as there are only minor things to be fixed in the unit.

The Tenant further testified as follows. The Tenant did declutter the rental unit when told to do so. The unit has never been cluttered to the point that it was a hazard. The Tenant does not have excessive belongings.

The Tenant further testified that they do not disturb others in the building as claimed and nobody has said anything to them about the alleged noise issues.

The Tenant further testified as follows. The Landlord's claims are not true. For example, the Landlord says the Tenant installed linoleum over the flooring; however, the Tenant simply put a piece of linoleum over the original flooring. The linoleum is not glued down and has not been "installed". Further, it is the Landlord who removed the closet doors from the unit, not the Tenant.

The Tenant submitted documentary evidence including photos of the rental unit and emails from the Tenant to the Landlord.

### Analysis

The Notice was issued pursuant to section 47 of the *Act* and the following subsections:

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...

(iii) put the landlord's property at significant risk;

(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,

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time;

(h) the tenant

- (i) has failed to comply with a material term, and
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so...

The Tenant had 10 days to dispute the Notice pursuant to section 47(4) of the *Act*. I accept that the Tenant received the Notice October 08, 2021, based on the testimony of the parties. The Application was filed October 14, 2021, within time.

Pursuant to rule 6.6 of the Rules, it is the Landlord who has the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

I am not satisfied based on the evidence provided that the Landlord had grounds to issue the Notice. I again note that the issue before me is whether the Landlord had grounds to issue the Notice on the date it was issued, not whether the Landlord currently has grounds to issue the Notice. I am not satisfied the Landlord has provided sufficient compelling evidence to prove the grounds for the Notice. I note that section 47 of the *Act* contemplates serious circumstances justifying an end to a tenancy.

The main issue here is that the Landlord's objective evidence, the evidence not authored by the Landlord's employees, does not support the claims being made by the Landlord.

The Landlord states that the rental unit has major damage, clutter and is unsanitary, yet the ten photos of the unit do not show a serious issue with the unit. The photos submitted by the Landlord do not justify ending this tenancy. I find the lack of photographic evidence to support the Landlord's claims concerning because the issues raised - damage, clutter and unsanitary conditions – are easy to capture in photos and yet the Landlord has failed to do so. Further, the Tenant has submitted photos of the unit which tend to support the Tenant's position that the unit does not have major damage, is not cluttered and is not unsanitary. I acknowledge that some of the Tenant's photos do show clutter in the unit; however, it is my understanding these are from when the Tenant got their unit ready for a pest inspection and do not show the usual condition of the unit.

As well, the only documentary evidence submitted that is not authored by an employee of the Landlord are two incident reports from October 30 & 31, 2021, and January 10, 2022, both after the Notice was issued. The incident reports are not relevant to the grounds for the Notice because they were authored after the Notice was issued.

I also find that the Landlord seems to have exaggerated some issues. For example, R.R. testified about receiving many complaints from other tenants about the Tenant, yet there are only two documented complaints in evidence, both authored after the Notice was issued. Further, the Landlord is taking issue with the Tenant “installing” linoleum in the rental unit; however, the Tenant’s photos show that the linoleum is simply set on top of the original flooring. It is not at all clear why it is an issue that the Tenant has set linoleum on top of the original flooring in the unit. I note that the Tenant submitted evidence showing they disputed the breach letters sent by the Landlord as not accurate.

I acknowledge that the Landlord called two witnesses at the hearing; however, these are the authors of the incident reports written after the Notice was issued and therefore, I do not find their evidence compelling evidence to prove the Landlord had grounds to issue the Notice October 08, 2021.

When I look at the Landlord’s evidence as whole, I find there is insufficient compelling evidence to support the Notice. Given this, the Landlord has failed to prove they had grounds to issue the Notice and the Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

### Conclusion

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with 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 *Act*.

Dated: June 15, 2022

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Residential Tenancy Branch