



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUNSET PARK APARTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant April 01, 2022 (the “Application”). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated March 23, 2022 (the “Notice”)
- To recover the filing fee

The Tenant appeared at the hearing. D.V. and A.J. 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 provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all relevant evidence provided. I will only refer 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?
3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started December 01, 2005.

The Notice was submitted. The grounds for the Notice are:

1. The Tenant...has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

The details of cause on the Notice state:

Tenant consistently has been verbally abusive to staff, impedes work that needs to be done to follow proper codes. And recently spit on our maintenance staff while doing fire inspection. Has been asked verbally and written to refrain from doing this....

There was no issue that the Tenant received the Notice March 23, 2022.

D.V. testified about the grounds for the Notice. The three issues relied on for the grounds for the Notice are (1) an incident between the Tenant and a maintenance person, M.M., outlined by M.M. in an email dated March 10, 2022 (2) D.V.'s personal interactions with the Tenant and (3) the Tenant's interactions with other maintenance staff and contractors.

The March 10, 2022 email from M.M. states that they attended the rental unit for a fire alarm inspection and the Tenant was angry, yelling, swearing and spit on M.M. The email states that this is the third time the Tenant has acted in this way.

In relation to D.V.'s interactions with the Tenant, D.V. testified that they have been met with hostility, door slamming, swearing and the Tenant being loud when dealing with the Tenant. D.V. testified that this has occurred three or four times in the last four years. D.V. said there is no documentation of these occurrences.

In relation to other maintenance staff and contractors, D.V. testified that these people have also been met with hostility, door slamming, swearing and the Tenant being loud when dealing with the Tenant. D.V. testified that this has occurred over the last four years. D.V. said there is no documentation of these occurrences.

A.J. had not had personal interactions with the Tenant and therefore could not provide testimony about their own experiences with the Tenant.

The only documentary evidence D.V. relied on to support the Notice was the March 10, 2022 email from M.M.

The Tenant denied all of the allegations relied on by the Landlord and D.V. as grounds for the Notice. The Tenant did acknowledge that there was one incident when they shut their bathroom door on D.V. because D.V. tried to enter the rental unit when they were showering and getting ready for work.

Prior to the hearing, the Tenant sought a summons to require witnesses to appear at the hearing to provide testimony.

### Analysis

I note at the outset that the Notice does not comply with section 52 of the *Residential Tenancy Act* (the "*Act*") as required because it does not include the rental unit address as the address the Tenant must vacate.

Further, the Notice was issued pursuant to section 47(1)(d)(ii) of the *Act* which states:

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

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant...

The Tenant had 10 days from receiving the Notice to dispute it pursuant to section 47(4) of the *Act*. There is no issue that the Tenant received the Notice March 23, 2022. The Application was filed April 01, 2022, within time.

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

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In relation to the March 10, 2022 incident between the Tenant and M.M., I am not satisfied based on the evidence provided that the incident occurred as outlined in the email submitted. The Tenant provided affirmed testimony that the incidents outlined in the email did not occur as stated. I place more weight on affirmed testimony than on an email because I find affirmed testimony to be more reliable and credible than an email. The Landlord did not provide a signed written statement from M.M. about the incidents. The Landlord did not provide an Affidavit from M.M. about the incidents. The Landlord did not call M.M. as a witness at the hearing to provide affirmed testimony about the incidents. In the absence of further compelling evidence, I am not satisfied the incidents outlined in the March 10, 2022 email occurred as stated by M.M.

D.V. testified that the Tenant has been hostile, slammed doors, sworn at and been loud towards D.V. when D.V. has dealt with the Tenant. The Tenant denied these allegations, other than the bathroom door incident. D.V. could not point to further evidence to support their position. I would expect there to be documentation of incidents with the Tenant if there had been serious incidents in the past. In the absence of further compelling evidence, I am not satisfied the allegations of D.V. occurred, other than the bathroom door incident.

D.V. testified that the Tenant has been hostile, slammed doors, sworn at and been loud towards other maintenance staff and contractors. The Tenant denied these allegations. I would expect there to be documentation of incidents with the Tenant if there had been

serious incidents in the past. In the absence of further compelling evidence, I am not satisfied the allegations of D.V. occurred.

In the circumstances, I am only satisfied that the bathroom door incident occurred. I do not find this incident sufficiently serious to end the tenancy pursuant to section 47(1)(d)(ii) of the *Act*.

Given the above, the Landlord has failed to prove the grounds for the Notice. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenant has been successful in the Application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from their next rent payment as reimbursement for the filing fee.

I did not consider the Tenant's request for a summons because I did not find it necessary to do so given my decision in this matter.

### Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

The Tenant can deduct \$100.00 from their next rent payment as reimbursement for the filing fee.

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: July 29, 2022

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Residential Tenancy Branch