



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNL, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order cancelling a One Month Notice to End Tenancy for Cause dated March 27, 2022 ("One Month Notice"); for an Order cancelling a Two Month Notice to End the Tenancy for Landlord's Use, dated May 13, 2022 ("Two Month Notice"), although in the hearing, the Tenant said she was not challenging this notice; and to recover the \$100.00 cost of her Application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in

the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recovery of her \$100.00 Application filing fees?

Background and Evidence

The Parties agreed that the periodic tenancy began on April 1, 2019, with a monthly rent of \$750.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$375.00, and no pet damage deposit. The Landlord confirmed that she still holds the security deposit in full.

One Month Notice

The Tenant submitted a copy of the One Month Notice, which was signed and dated March 27, 2022, and which has the rental unit address. The One Month Notice was served by posting it on the rental unit door on March 27, 2022, and it had an effective vacancy date of April 30, 2022. This Notice was served on the grounds that The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; 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; and jeopardized a lawful right or interest of another occupant or the landlord.

In the section entitled "Details of Cause(s)" on the One Month Notice, the Landlord wrote [reproduced as written]:

Tenant [(H.)] recording with her phone when the technician like [P. pest control service] provider came to do the service at [residential property address]. They told her to stop recording them but she didn't stop so service providers don't want to come to the house to provide the service because they complained it is illegal and jeopardize a lawful right or interest and disturbed them mentally without

there permission. She also recording the conversation of others tenants personal and when they talk to me. March 22, 2022 at 4:30pm. I was talking with [K.M.] in the living room and I didn't know she was hiding behind the hallway wall recording our conversation suddenly I moved to the hallway to change the fire alarm battery she ran to her room with recorder and same time I mention to [K.] but she went to her room and didn't come out from her room.

This is unacceptable recording other people without their knowledge because first this is illegal and affect the quite enjoyment, security, ar physical well being of other tenants and the landlord.

In the hearing, the Landlord said:

As of September 2021, she was doing a video recording of other tenant, but she never did this often, but now she always has a camera. She's 24/7 in the home. She comes out from the room she has a video recording and she enquires about everything. The workers don't want to be video recorded.

First, I ignored her, but one day I was in the living room talking to another tenant, about his personal problem, and [the Tenant] was recording us talking.

I talked to my lawyer. I don't think she needs this stuff. I called and the RTB said to give her a one month notice. I warned her to not do this, but she never stopped.

She's always complaining, 'You can't come without 24 hours notice'. If I have to go to her room. On July 5 I was cleaning the yard and garage with my sister. We were in the garage with the door open, my sister saw her and she came out with the video camera, I told my sister to ignore her. She entered into the garage without my permission. She thinks she is a landlord and I am a tenant. She pushed my shoulder and she stopped me from closing the door. I pushed her out and she called the police.

The Tenant responded:

There's quite a lot that's false there; I was trying to keep notes. As far as recording tenants, she had no evidence to back that up, aside from a photo of someone who had been evicted.

The Tenant continued to comment on the incident on July 5, 2022, with the Landlord in

the garage; however, this incident happened after the One Month Notice was served, therefore, it does not support the reasons for issuing this Notice, since it occurred over two months after service of the One Month Notice.

### Two Month Notice

The Tenant said in the hearing, that she is not challenging the Two Month Notice, which means that I must give the Landlord an order of possession on this basis, if the Notice is consistent with section 52 as to form and content; the Landlord still has the burden of proof on a balance of probabilities in this matter.

The Two Month Notice was signed and dated May 13, 2022, it has the rental unit address, it was served in person on May 13, 2022, with an effective vacancy date of July 31, 2022, and it was served on the grounds that the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse). The Landlord had selected the option saying that the Landlord or the Landlord's spouse will occupy the unit.

I asked the Landlord why she served the Two Month Notice, and she said:

Actually, the place I'm moving, I know I could move her with the One Month Notice, but my sister, where I'm living, I have a single garage. I have my stuff in one of the rooms, and I need the room that I've been storing the stuff to go somewhere. I couldn't put my stuff in the garage, but some of the stuff are in the basement suite, and my sister is building a house and she will use my room, so I need to keep stuff in that room. My paperwork and stuff, because I have other stuff that I can't keep in the garage. I want to use her room for storage of things because it has heat and it has a sliding glass door and I don't have to use the front door to get in.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

### One Month Notice

Section 47 of the Act allows the landlord to end a tenancy for cause:

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,

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

(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,

(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;

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

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.

In this case, the Landlord alleged that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property by video recording other tenants, the Landlord, and workers who attend the property to do

repairs. However, the Landlord did not point me to any evidence she had submitted to support this allegation. As the Tenant has submitted some video recordings, I find that it is more likely than not that she does use this feature on her cell phone. However, the Landlord did not point me to any evidence she submitted from other tenants or from trades people complaining about the impact this has on them.

Further, the Landlord said that it is illegal for the Tenant to record people in this way; however, the Landlord did not cite which law this contravenes.

When I consider all the evidence before me overall, I find that the Landlord has not provided sufficient evidence to meet her burden of proof on a balance of probabilities to support the validity of the One Month Notice. Accordingly, and pursuant to sections 47 and 62 of the Act, **I cancel the One Month Notice** and find that it is void and unenforceable.

### Two Month Notice

Section 49 of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit, if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The burden of proof is as set out above.

The Landlord said she intends to use the room to store her documents and other possessions that need the storage to be heated space. I, therefore, find that the Landlord does not intend to move into the room, nor have it occupied by her spouse, as was set out on the Two Month Notice as the purpose for issuing it.

As the purpose for using the suite is different than that set out on the Two Month Notice, I find that the Two Month Notice is not valid. I, therefore, cancel the Two Month Notice and find that it is void and unenforceable, pursuant to sections 49 and 62 of the Act.

As I have found that both Notices to end the tenancy are void and unenforceable, I find that the Tenant is successful in her claims to cancel these Notices. As such, I award the Tenant with recovery of both of her \$100.00 Application filing fees from the Landlord, pursuant to section 72 of the Act. The Tenant is authorized to deduct \$200.00 from one upcoming rent payment in complete satisfaction of this award.

The tenancy continues until ended in compliance with the Act.

Conclusion

The Tenant is successful in her Application to cancel the One Month Notice and the Two Month Notice, as the Landlord did not provide sufficient evidence to meet her burden of proof on a balance of probabilities. These Notices are cancelled and they are void and unenforceable under the Act.

Given her success in this matter, I award the Tenant with recovery of both of her \$100.00 Application filing fees. The Tenant is authorized to deduct \$200.00 from one upcoming rent payment in complete satisfaction of this award.

The tenancy continues until ended in compliance 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 *Residential Tenancy Act*.

Dated: July 26, 2022

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Residential Tenancy Branch