



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for cancellation of a One Month Notice to End Tenancy for Cause dated March 22, 2022 (the "One Month Notice") pursuant to section 47.

The Tenant, the Landlord's agent DS, the property owner's mother BB, and the property owner's sister EB attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. During the hearing, the Landlord called one witness, MH.

All attendees at the hearing were advised the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

The parties did not raise any issues with respect to service of documents for dispute resolution. Each side confirm they served the other via registered mail. The tracking numbers for the parties' registered mail packages are indicated on the cover page of this decision.

### Issue to be Decided

Is the Tenant entitled to cancel the One Month Notice?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The rental unit is one half of a duplex property. The tenancy commenced on August 31, 2018 and is month-to-month. Rent is \$1,100.00 due on the first day of each month. The Tenant paid a security deposit of \$550.00 which is held by the Landlord. A copy of the parties' tenancy agreement has been submitted into evidence.

The Landlord named on this application is a property management company. It is also the landlord named on the parties' tenancy agreement and the One Month Notice.

A copy of the One Month Notice is submitted into evidence. The One Month Notice is dated March 22, 2022 and has an effective date of April 30, 2022. The reasons for the One Month Notice are stated as follows:

*Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.*

*Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.*

*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.*

*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.*

*Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.*

The One Month Notice provides the following additional details of cause:

*Tenant has a grow op in the house. He is actively growing + selling from our residence. Tenant has camera's facing the neighbors yard. RCMP having attended. Disturbing the neighborhood.*

The Landlord submitted a signed Proof of Service document which confirms that a copy of the One Month Notice was posted to the Tenant's door on March 22, 2022.

The Landlord's agent DS testified that the Tenant had started a cannabis grow op in the rental unit. DS testified that the Landlord did not know the Tenant had a medical cannabis license.

DS testified that the Tenant had retrofitted the building, including putting in plywood to vent the cannabis plants. DS testified that the Tenant's grow op was causing damaging to the rental unit, with the moisture overloading the electrical system.

DS testified that the Tenant also has a compost pile in the backyard made from pallets and chicken wire. DS testified that the compost pile is unsightly, smelly, and attracts rodents. DS testified that the Landlord has received complaints from neighbours about the compost pile.

DS testified that the Landlord also received complaints from neighbours about noise coming from the rental unit and the Tenant setting up security cameras on the rental property which point at the neighbours' backyard and deck. The Landlord's evidence also suggests that the security cameras are "perforating" the siding to which they have been attached.

DS submitted that the owner of the rental unit is facing their insurance cost being doubled due to the grow op and may lose their home insurance.

EB, the sister of the owner, testified that the insurance cost with the grow op would be twice as much and make the rental unit unaffordable. EB argued that the owner would have to put the rental unit on the market, and that there would be a huge loss in value as few prospective buyers will want to purchase a grow op property.

EB argued that the grow op greatly increases the rental unit's risk of fire and theft. EB testified that the Tenant did not give notice to make the changes to the rental unit. EB argued that the changes should be undone. EB argued that the situation is unfair for the tenants who live in the other half of the duplex. EB stated that her mother, BB, is the one paying for all of the bills related to the rental unit and has to deal with the loss of income.

BB testified that the rental unit is in her son's name, but due to his medical issues, BB takes care of all matters relating to the rental unit and is supported by EB. BB confirmed she pays for all of the expenses associated with the rental unit.

BB testified that she was told by her insurance agent that the insurance cost would be “substantially more”, “at least twice as more”. BB confirmed that this would make the property unaffordable. BB confirmed the Tenant had not informed the Landlord regarding the alterations. In support, the Landlord submitted an email from BB dated June 29, 2022 which states in part (portions redacted for privacy):

*I spoke to our insurance agent [P] who is with [Insurance Broker]. The present renter with his grow op results in a potential doubling of our premium. It is at present \$2,616.00. Without notifying [D] or ourselves he made changes to the basement to accommodate his grow-op business. If he has more than 5 plants it is a business and as such the insurance greatly increases. Inside a house humidity affects the walls creates mold. The plants require high moist heat. There is a higher risk of fire.*

*It is time to advertise for a new tenant. He will need 30 days notice so if he is given notice now hopefully we can rent within a month to a tenant who is not growing marijuana for sale to others for (sic) use for himself. If his medical certificate is for himself he is not allowed to have more than 5 plants the insurance broker told me.*

*The tenant did convert our duplex to his own use without our permission. We do not want him to remain because we would be unable to buy insurance to cover the damage to the interior of the building and would also prevent the other good tenants from getting insurance overage for their own place.*

The Landlord’s evidence indicates that an inspection of the rental unit was conducted on March 22, 2022, which led to their discovery of the grow op. The Landlord called a witness, MH, who is an employee of the Landlord. MH testified she conducted the inspection and had taken pictures. The Landlord submitted photographs of the rental unit taken by MH into evidence. MH testified that the photographs show nine plants in an incubator, a “tent” with hoses for ventilation, and windows altered to allow venting outside. The photographs appear to show that the grow op is located inside an unfinished basement area of the rental unit.

The Landlord submitted additional documentary evidence including:

- Email complaints from C, a neighbouring homeowner, dated March 15, 2022, April 21, 2022, and May 29, 2022 regarding the Tenant's security cameras and compost;
- A decision of the Residential Tenancy Branch for a previous dispute resolution proceeding dated July 14, 2021, in which the Tenant had his claims for rent reduction and an order that the Landlord comply with the Act dismissed;
- A condition inspection report for the rental unit dated August 31, 2018;
- Photographs of the compost pile said to have been taken on June 21, 2022; and
- Photographs of the Tenant's security cameras attached to the siding of the rental property.

In response, the Tenant testified that he did not intend to cause the owners grief. The Tenant explained that he did not need to notify the Landlord or ask for permission to have a grow op for medical cannabis. The Tenant disputed that he had received proper notice for the March 22, 2022 inspection.

The Tenant argued that the Landlord has not provided any evidence to show that the Tenant was selling cannabis. The Tenant testified that he did not have a criminal record. The Tenant testified he had offered for MH to speak with the medical cannabis licensing officer. The Tenant stated that he has a persons with disabilities designation.

The Tenant submitted a copy of his medical cannabis registration certificate (the "Registration Certificate"). The Registration Certificate states that the Tenant is permitted to grow a maximum of 49 indoor marihuana plants and identifies the rental unit as the "production site address". The Registration Certificate states that the type of production is "personal". The Registration Certificate states an expiry date of March 19, 2022.

The Tenant submitted a letter from Health Canada dated March 3, 2022 which includes the following excerpts:

*Thank you for your application to obtain a registration to produce cannabis for your own medical purposes under the Cannabis Regulations. Health Canada has screened your application package and it was found to be incomplete in the area(s) identified below.*

*While Health Canada makes every effort to identify all missing information in an application during the initial screening process, it remains the responsibility of the applicant to ensure that a complete application is resubmitted. Please review your application for completeness before resubmitting.*

*[...]*

*Missing pages: 5-6-7 (please see blank registration form enclosed)*

*As your application was submitted before the expiry of your registration, you have 30 days to resubmit your application. During this time, your current registration remains in effect. Should you not submit an application by the end of this 30-day period, your current registration will be deemed expired. [...]*

The Tenant testified he re-submitted his application before the deadline and is waiting to receive a response from Health Canada. The Tenant submitted a registered mail receipt dated March 21, 2022 in support. The Tenant argued that he is grandfathered in until he receives the response.

The Tenant also submitted a copy of an email that he sent to an RCMP constable, PT, dated March 23, 2022, with copies of the Registration Certificate attached.

The Tenant testified that while the Registration Certificate allows him to grow up to 49 plants at a time, he is not interested in growing 49 at once. The Tenant testified that since there is a 50-50 chance for male or female plants, multiple attempts are required to obtain the desired strains. The Tenant testified the allowance is there so that extra plants can be killed off without going over the limit.

The Tenant denied that he has damaged the rental unit. The Tenant testified he did not remove the window frames as alleged. The Tenant testified that the window openings have been covered with spray foam which can be cut with a knife. In an email to EB dated July 4, 2022, the Tenant wrote:

*[...] I have removed 2 windows while leaving the frames intact to install 8 inch ducting to allow for air flow. The plants are in tents that vent to the outdoors. I have been inspected by the RCMP and I have not in any way tampered with electrical. The windows are presently under my bed and I am hoping to place them in the shed after the hearing if it goes my way. [...]*

Regarding the security cameras, the Tenant testified he has done his best to limit the view of the cameras and had spoken with the RCMP regarding their use. The Tenant submitted photographs showing the viewpoints from his security cameras. The Tenant submitted a copy of an email that he had sent to an RCMP constable, CR, dated September 16, 2020, regarding his use of the security cameras.

The Tenant denied that the security cameras are “perforating” the siding to which they are attached. The Tenant testified that he used double-sided tape to affix a round magnetized ring to the siding. The Tenant submitted photographs showing the ring and the security camera wiring.

The Tenant testified that the neighbouring homeowner C and C’s family members have made false claims against the Tenant. The Tenant testified that RCMP have attended the rental property because of those claims but ended up siding with the Tenant.

The Tenant testified the RCMP has also attended the rental property because there had been a shooting in the neighbourhood. The Tenant’s evidence alleges that there has been biker gang activity nearby and that C is a member of this gang.

Regarding his compost, the Tenant testified that he had it cleared with city bylaw officers twice. The Tenant submitted a letter from the city dated April 8, 2022. This letter indicates that the city was responding to the Tenant’s request under the *Freedom of Information and Protection of Privacy Act* for copies of records related any bylaw complaints regarding the Tenant at the rental property from 2019 until March 23, 2022. The Tenant also submitted the enclosed records into evidence. These records show that complaints about a compost were investigated and closed on June 30, 2020 and on August 24, 2020.

In reply, DS emphasized that the owner stands to lose a great deal of money in this situation. DS argued that the Tenant’s grow op has the potential for mould, fire, and overloading the electrical system.

### Analysis

The standard of proof in this 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.

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 47(3) of the Act requires a notice to end tenancy for cause given by the landlord to comply with section 52, which states:

**Form and content of notice to end tenancy**

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

Section 47(2) further requires that the effective date of a landlord's notice under section 47 must be:

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, the One Month Notice is dated March 22, 2022 and has an effective date of April 30, 2022. I have reviewed a copy of the One Month Notice and find that it complies with the requirements set out in sections 52 and 47(2) of the Act.

Based on the Landlord's evidence, I find the Tenant was served with the One Month Notice in accordance with section 88(g) of the Act.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days of receiving such notice. Records indicate that the Tenant submitted this application on March 24, 2022. As the earliest day that the Tenant could have received the One Month Notice was March 22, 2022, I find the Tenant has made this application within the 10-day dispute period required by section 47(4) of the Act.



Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

The One Month Notice provides five different grounds of cause for ending the tenancy. The corresponding provisions under sections 47 of the Act state as follows:

**Landlord's notice: 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,

[...], 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;

I note that section 21.1 of the Act provides some guidance on terms in a residential tenancy agreement relating to smoking and growing cannabis. However, since the Landlord has not indicated breach of a material term of the tenancy agreement under section 47(1)(h) of the Act as a cause for eviction, I find it is not necessary for me to discuss section 21.1 of the Act in detail even though this application involves a cannabis grow op.

In this case, to determine whether the Landlord has established cause for ending the tenancy under the One Month Notice, I will consider the following sub-issues: (a) whether the Tenant has engaged in illegal activity warranting eviction under section

47(1)(e) of the Act, (b) whether the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord under section 47(1)(d)(i) of the Act, (c) whether the Tenant has put the landlord's property at significant risk under section 47(1)(d)(iii) of the Act, and (d) the potential for increased insurance costs for the property owner.

*a. Has the Tenant engaged in illegal activity warranting eviction?*

Residential Tenancy Policy Guideline 32. Illegal Activities provides the following guidance on what may constitute an "illegal activity" under section 47(1)(e) of the Act:

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.

Based on the evidence before me, I do not find the Landlord to have established on a balance of probabilities that the Tenant has engaged in any "illegal activity", whether in respect to the Tenant growing cannabis or setting up security cameras on the rental property. I find the Landlord has not identified any specific statute or bylaw which the Tenant is alleged to have contravened.

Furthermore, I find that the Tenant was entitled to grow medical cannabis under the terms of the Registration Certificate. I accept the Tenant's evidence that he has re-applied for a renewal of his medical cannabis license within the 30-day deadline required by Health Canada to prevent his current registration from expiring. I accept the Tenant's testimony that as at the date of this hearing, he was waiting to receive a response from Health Canada.

I find there is insufficient evidence for me to conclude that the Tenant had sold cannabis or had been growing cannabis for a business purpose.

Accordingly, I do not find on a balance of probabilities that the Tenant has engaged in any “illegal activity”. I conclude that the Landlord has not demonstrated cause for ending the tenancy under sections 47(1)(e)(i), (ii), and (iii) of the Act.

*b. Has the Tenant significantly interfered with or unreasonably disturbed another occupant or the landlord?*

As stated above, section 47(1)(d)(i) of the Act states that a landlord may end the tenancy if the tenant or a person permitted on the residential property by the tenant has “significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property”.

Section 1 of the Act defines “residential property” as:

- (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
- (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
- (c) the rental unit and common areas, and
- (d) any other structure located on the parcel or parcels;

I find that C and C’s family members, who reside on a separate neighbouring property or properties, do not fall under definition of “another occupant [...] of the residential property” under section 47(1)(d)(i).

In any event, I find that C’s complaints about mice problems caused by the Tenant’s compost to be unsupported by any extrinsic evidence such as photographs or a report from a pest control company.

I have reviewed the photographs of the compost pile submitted by both the Landlord and the Tenant. I do not find the photographs to suggest the presence of any rodents in or near the compost. I also do not find the photographs to show that the compost is particularly unsightly. I note that the compost is in the backyard rather than at the front of the property.

In addition, I have reviewed the photograph submitted by the Tenant showing the viewpoint for his bedroom window security camera. I find that this camera is pointed downwards and largely aimed at the Tenant's side of the fence and the Tenant's backyard. I have also reviewed a video recording submitted by the Tenant which shows that the other security camera appears to be attached above the Tenant's front door and is pointed towards the street. Moreover, I accept the photo evidence submitted by the Tenant which shows that neighbouring residents have put up similar security cameras on their properties.

I find that the Landlord has not clearly explained how the Tenant's grow op may have significantly interfered with or unreasonably disturbed other occupants or the Landlord.

I also find that the Landlord has provided insufficient evidence to substantiate their allegation of noise caused by the Tenant.

Based on the above, I do not find on a balance of probabilities that the Tenant has significantly interfered with or unreasonably disturbed the Landlord or the other tenants of the duplex. Accordingly, I conclude that the Landlord has not established cause for ending the tenancy under section 47(1)(d)(i) of the Act.

*c. Has the Tenant put the rental property at significant risk?*

Based on a careful review of the evidence before me, I find there is insufficient evidence for me to conclude that the Tenant has put the rental property at "significant risk" warranting eviction under section 47(1)(d)(iii) of the Act.

Although the Landlord has expressed concerns regarding the risk of mould, fire, theft, and damage to the electrical system caused by the grow op, I find there is insufficient evidence to demonstrate that these risks rise to the level of "significant".

For example, I find the Landlord has not submitted any evidence to show actual mould or water damage that has started to occur in the rental unit. There is also no evidence before me regarding the actual moisture level inside the rental unit or whether it is unreasonable and likely to cause damage.

Similarly, in the absence of more substantive evidence such as a report from an electrician or information relating to the amount of electricity consumed by the Tenant's

setup, I am unable to conclude that the grow op is likely to overload the electrical system of the rental unit.

I also do not find that the Tenant has put the rental property at “significant risk” by having the compost. As mentioned above, I find there is insufficient evidence to suggest that the compost creates or is likely to create a significant rodent problem. I also find there is insufficient evidence to explain how the compost increases the risk of fire in comparison with other wooden structures on the rental property.

Although I conclude that the Tenant has not put the rental property at “significant risk” warranting eviction, I do find that the Tenant made changes to the rental unit without first obtaining the Landlord’s express consent.

Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises (“Policy Guideline 1”) states as follows:

**RENOVATIONS AND CHANGES TO RENTAL UNIT**

1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.
2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

(emphasis added)

I find Policy Guideline 1 does not clearly state whether the unauthorized change to the rental unit must be returned to the original condition immediately upon discovery or simply before the tenant vacates the rental property.

In my view, provided that the unauthorized change to the rental property does not fall under one of the causes for eviction under section 47 of the Act, such as by putting the rental property at “significant risk” under section 47(1)(d)(iii) or resulting in “extraordinary damage to the rental unit” under section 47(1)(f), I find the unauthorized change to be less of a matter relating to eviction and more of a matter relating to compensation for the landlord.

Accordingly, I find that if the Tenant does not restore the rental unit to its original condition prior to the end of this tenancy, the Landlord will be entitled to compensation from the Tenant in the manner stated above.

*d. Potential for Increased Insurance Costs for the Property Owner*

During the hearing, the Landlord emphasized that there will be an increase in the property owner's insurance costs due to the Tenant's grow op. Upon review of the evidence, I find it is unclear whether the owner's insurance costs will double given that the Tenant is not growing any non-medical plants. The Landlord's evidence suggests that growing more than five non-medical plants would be considered running a business by the insurer. Although the Tenant is growing more than five plants, they are all medical plants. The Tenant's license confirms that the plants are for personal use, and there is no evidence to suggest that the Tenant is running a cannabis business in the rental unit. Therefore, I am unable to conclude on a balance of probabilities that the owner's insurance costs will double due to the Tenant's grow op.

In any event, I am not satisfied that an increased financial burden to the owner due to greater operating costs alone warrants ending a tenancy under the Act. I note that section 23(1)(a) of the Residential Tenancy Regulation permits a landlord to apply for an additional rent increase due to "financial loss from an extraordinary increase in operating expenses" for the rental property. Policy Guideline 37. Rent Increases states that "operating expenses" include insurance premiums.

In my view, it is necessary to consider whether the Tenant's conduct has amounted to cause warranting eviction under section 47 of the Act. As explained above, I have determined that the evidence on this application is insufficient for me to conclude that there is cause for evicting the Tenant under sections 47(1)(d)(i), 47(1)(d)(iii), or 47(1)(e) of the Act.

I conclude that the Landlord has not established on a balance of probabilities any of the specific grounds stated in the One Month Notice. Accordingly, I order that the One Month Notice be cancelled and of no force or effect.

Conclusion

The One Month Notice is cancelled and of no force or effect.

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: August 11, 2022

---

Residential Tenancy Branch