



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC-MT**

### Introduction

This hearing was convened by way of conference call in response to the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenant seeks:

- more time to make the Application to cancel the Landlord's One Month Notice to End Tenancy for Cause dated April 13, 2022 ("1 Month Notice") pursuant to section 66; and
- if an extension of time is granted to make the Application, cancellation of the 1 Month Notice pursuant to section 47.

The Landlord's agent ("KV") and the Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant stated he served the Notice of Dispute Resolution Proceeding ("NDRP") on the Landlord by registered mail but could not recall the date it was mailed. KV acknowledged the Landlord received the NDRP by registered mail on May 13, 2022. I find the NDRP was served on the Landlord in accordance with the provisions of section 89 of the Act.

The Tenant stated he did not serve any evidence on the Landlord.

KV stated the Landlord served the tenant with its evidence on August 4 and August 8, 2022 in-person on the Tenant. The Tenant acknowledged he received the Landlord's

evidence. I find the Landlord's evidence was served on the Landlord in accordance with the provisions of section 88 of the Act.

### Issues to be Decided

- Is the Tenant entitled to an extension of time to make the Application to dispute the 1 Month Notice?
- If the Tenant is entitled to an extension of time to make the Application, is he entitled to cancellation of the 1 Month Notice?
- If the 1 Month Notice is not cancelled, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

### Background and Evidence

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

The parties agreed the tenancy commenced on June 1, 2017, for a fixed term ending August 31, 2017, with rent of \$390.00 payable on the 1st day of each month. The Tenant was required to pay a security deposit of \$195.00 on or before June 1, 2017. The KV stated the Tenant paid the Landlord the security deposit and that the Landlord was holding the deposit in trust for the Tenant.

KV stated the 1 Month Notice was served on the Tenant in-person on April 13, 2022. The Tenant acknowledged he received the 1 Month Notice. The 1 Month Notice stated the causes for ending the tenancy were:

- 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 of the landlord
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.

The 1 Month Notice provided the following details of the causes for ending the tenancy:

[Name of Tenant] a tenant of [Name of Landlord] assaulted another tenant of the [Landlord} in a neighbouring building. The assault happened off the property but on the sidewalk in front of the property. The assault was regarding monies owed. [The Landlord's] staff had to intervene to stop the assault. [The Tenant] returned home and continued to utter threats against the other tenant "he would have to take things in his hand again, as [name of other tenant] had to learn his lesson" & [name of Tenant] repeatedly said "he was going to get "[name of other tenant]", (the other tenant). Threats of harm are illegal and are not tolerated.

KV provided details of the alleged assault by the Tenant on another occupant of the residential premises. KV admitted the assault did not occur on the residential premises. KV did not provide a legible copy of the federal, provincial or municipal legislation to establish the illegality of the Tenant's conduct.

The Tenant stated he was served with the 1 Month Notice on the Easter Weekend and he had a difficult time to obtain help. The Tenant stated he finally obtained assistance from an advocacy group but the Application was made late.

### Analysis

Subsections 47(1)(e)(ii) and 47(1)(e)(iii) and sections 47(2) through 47(5) of the Act state:

- 47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
  - [...]
  - (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
    - (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;
  - [...]
- (2) A notice under this section must end the tenancy effective on a date that is

- (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.
- (3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
  - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit by that date.

KV stated the 1 Month Notice was served on the Tenant in-person on April 13, 2022. Pursuant to section 47(4), the Tenant had 10 days after service of the 1 Month Notice, being April 23, 2022, within which to make an application for dispute resolution to dispute the 1 Month Notice. The records of the Residential Tenancy Branch ("RTB") disclose the Tenant made the Application on April 29, 2022. As such, the Tenant made the Application after the 10-day dispute period.

*Residential Tenancy Branch Policy Guideline 36* ("PG 36") provides guidance on when an arbitrator may extend or modify a time limit established by the Act only on the basis of exceptional circumstances. PG 13 states in part:

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

The Tenant stated the 1 Month Notice was served on the Easter Weekend and that he was unable to obtain assistance to make the Application until after the expiry of the 10-day dispute period. The Tenant had 10 days to make an application for dispute period and losing several days over the Easter weekend left him with adequate time to make an application to dispute the 1 Month Notice. If he was uncertain of the procedures for making an application, he could have referred to the RTB's website or used the toll-free number to call for assistance. I find the failure of the Tenant to meet the relevant time limit was caused or contributed to by the inaction of, or neglect by, the Tenant. As such, I dismiss the Tenant's claim for an extension of time to make the Application. Based on the foregoing, I dismiss the Application without leave to reapply.

Section 55(1) of the Act states:

- 55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Notwithstanding I have dismissed the Application, the Landlord is nevertheless required to demonstrate, on a balance of probabilities that there is cause to end the tenancy in order to seek an Order of Possession pursuant to section 55(1) of the Act.

*Residential Tenancy Policy Guideline 32* ("PF 21") provides guidance on when a landlord may terminate a tenancy for illegal activity that meets one or more of the following requirements:

- has caused or is likely to cause damage to the landlord's property
- has adversely affected or likely to adversely affect the quiet enjoyment, security, safety or physical wellbeing of another occupant of the residential property
- has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord

PG 32 states:

### **The Meaning of Illegal Activity and What Would Constitute an Illegal Activity**

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.*

[emphasis added in italics]

PG 32 also states:

**Circumstances for Ending the Tenancy**

A tenant may have committed a serious crime such as robbery or physical assault, however, *in order for this to be considered an illegal activity which justifies issuance of a Notice to End Tenancy, this crime must have occurred in the rental unit or on the residential property.*

[emphasis added in italics]

KV acknowledged the assault did not occur on the residential property. Furthermore, the Landlord did provide me and the Tenant with a legible copy of the relevant statute or bylaw to corroborate the Tenant committed an illegal activity. As such, the Landlord has failed to demonstrate that the two causes, indicated in the 1 Month Notice, constituted an illegal activity. As such, I find the Landlord has not proven cause under sections 47(1)(e)(ii) and 47(1)(e)(iii) of the Act. I find the 1 Month Notice was not issued for a valid cause. Based on the foregoing, I order the 1 Month Notice to be cancelled. The tenancy continues until ended in accordance with the provisions of the Act.

Conclusion

The Application is dismissed in its entirety.

The 1 Month Notice is cancelled. The tenancy continues until ended in accordance with the provisions of 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: August 28, 2022

---

Residential Tenancy Branch