



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC OLC FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant MA (the "tenant") spoke on behalf of both named applicants. The landlord SM (the "landlord") exclusively spoke on behalf of the named respondents.

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in November 2020. The monthly rent is \$2,130.00 payable on the first of each month. The rental unit is a basement suite in a detached home with two-units. The landlord resides in the main floor.

The landlord issued a 1 Month Notice dated July 26, 2022. A copy of the notice was submitted into evidence. The notice provides the reasons to end the tenancy are:

*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;*
- *put the landlord's property at significant risk.*

*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*

*Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The parties agree that the underlying complaint by the landlords regarding the tenant's conduct is smoking of marijuana products on and around the rental property. The landlord testified that on March 19, 2021 they detected strong odour of marijuana

products in the laundry room of their suite. The landlord submits that the tenancy agreement clearly prohibits smoking on the premises and the tenant has been warned each time the landlord detects odour consistent with smoking. The landlord submits that the odour was detected on July 3<sup>rd</sup> and July 5<sup>th</sup> and subsequently in September 2021. The landlord issued a warning letter dated September 9, 2021 advising the tenant that smoking on the property is a breach of the tenancy agreement.

The landlord submits that the tenant was subsequently found smoking in the backyard of the rental property as well as on adjacent backroad property belonging to others on February 2, 2022.

The landlord says that in addition to the continued smell of marijuana on the property the tenant has engaged in behaviour that they characterize as deliberate disruptions and interference including allowing visitors with pets to attend the property, breaking a garden hose handle, complaining about utilities and trespassing into the backyard areas which are the exclusive property of the landlords.

The landlord served the tenant with the 1 Month Notice on July 26, 2022. The tenant filed their present application on August 1, 2022 and disputes that there is any basis for the tenancy to end.

The tenant testified that they do not smoke on the rental property and walk off of the property when they smoke. The tenant said that they are mindful of the smell of smoke and take steps, including keeping their marijuana products in sealed containers and walking clear off the property or near any ventilation intake systems. The tenant had no explanation for the landlord's observations of the smell of smoke in their suite.

The tenant explained that any instances of trespass are solely for the purpose of retrieving mail that is delivered to the common yard area and that the garden hose handle broke due to age rather than their neglect or active vandalism.

The tenant submits that the tenancy agreement provides that a Dishwasher is included in the monthly rent and seeks an order that the landlord provide a dishwasher or a reduction in the rent. The tenant also submits that while use of the backyard and front yard of the property are not included in the tenancy agreement the side area of the property are included in the tenancy agreement as the exclusive property of the tenant. As such, the tenant seeks an order that the landlord remove any security cameras installed monitoring the side areas of the house.

The landlord acknowledges that the signed tenancy agreement includes a dishwasher as an element of the tenancy but says that is a typographic error. The landlord submitted the move-in condition inspection report signed by the parties which clearly indicates that no dishwasher is included as well as the original advertisement for the suite which omits a dishwasher as an included amenity.

The landlord disputes that the areas on the sides of the property are included in the tenancy and says they are common areas. The landlord says that placing motion activated security cameras is simply part of their duties to maintain the rental property.

### Analysis

Section 47(4) of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. In the present case the parties agree the tenant was served with the 1 Month Notice on July 26, 2022 and filed their application for dispute resolution on August 1, 2022. Therefore, I find the tenant was within the statutory timeline to dispute the 1 Month Notice.

When a tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice.

In the matter at hand the landlord must demonstrate any of the following:

*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;*
- *put the landlord's property at significant risk.*

*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*

*Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

Based on the totality of the evidence I find the landlord has not met their evidentiary onus on a balance of probabilities. I find the landlord's submissions to consist primarily of subjective observations, accusations and conjecture about motivations without sufficient documentary evidence in support.

I find the landlord's complaints about the odour of marijuana to be hyperbolic and sometimes self contradictory. The landlord says they smelled smoke on specific dates; March 19, 2021, July 3, 2021, July 5, 2021 September 9, 2021, and February 2, 2022. I find five days over a period of two years would not reasonably be characterized as an unreasonable disturbance. I would further find little evidence to characterize this as behaviour which poses risk to the health or safety in any significant manner.

I find insufficient evidence to support the landlord's submissions. I find the landlord's submissions consists of their observations and testimony with little documentary materials in support, no witness statements from anyone else providing additional observations or video recordings if the tenant is smoking on the property.

In addition, I find little support for the other complaints made by the landlord regarding the broken hose, state of the property or incidents they characterize as trespass. I find that such incidents as described by the parties are minor and would not be rationally characterized as causing significant risk to the property or a danger to the safety, well-being and quiet enjoyment of others.

Even if I were to accept all of the landlord's submissions, I find that the incidents referenced would not cumulatively rise to the level of being a significant interference or unreasonable disturbance such that it would give rise to a basis to end the tenancy.

I find insufficient evidence to show that there has been any breach of a material term of the tenancy agreement with the tenant smoking on the property. I am not satisfied based on the evidence before me that the tenant has breached the tenancy agreement by smoking on the rental property. The landlords' submissions consisting of accusations, and subjective observations is not sufficient to meet their evidentiary onus.

I am not satisfied that the landlord has established any portion of the 1 Month Notice on a balance of probabilities. Accordingly, I grant the tenant's application and cancel the notice. This tenancy continues until ended in accordance with the *Act*.

I find insufficient evidence in support of the balance of the tenant's application. I find the tenancy agreement signed by the parties is silent on what areas of the yard are reserved for the exclusive use of the tenant as part of the agreement. It is reasonable to conclude that areas adjacent to a detached home must be available for the use of occupants of the property otherwise they would be unable to access the rental unit. I am unable to find, based on the paucity of evidence, that the areas on the side of the house are reserved for the exclusive use of the tenant. As such, and given the little information provided by the parties regarding the position of the security devices, I decline to order that the landlord remove security cameras on the property.

As regards the dishwasher for the rental unit, I find the landlord's submission to be persuasive and supported in the documentary materials. While the tenancy agreement includes a dishwasher in the rent, all other documents do not indicate that the appliance is included. I further note that by the tenant's own testimony, they have been residing in the rental unit for close to 2 years without expecting a dishwasher to be provided. It was only upon reviewing the tenancy agreement recently that they came to believe a dishwasher was included in the monthly rent. I find that the circumstances of the agreement including the conduct of the parties and surrounding materials are consistent with the landlord's interpretation that a dishwasher is not included and any contrary indication is a typographic error. As such, I find no breach of the agreement that would give rise to an order of compliance. I will note that the parties would be wise to correct typographic errors now that it has been identified.

As the tenant was successful in their application, they are entitled to recover their filing fee from the landlords. As this tenancy is continuing, they may satisfy this monetary award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

Conclusion

The tenants are successful in their application to cancel the 1 Month Notice. The notice is of no further force or effect. This tenancy continues until ended in accordance with the Act.

The tenants are authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

The balance of the application is dismissed without leave to reapply.

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: September 16, 2022

---

Residential Tenancy Branch