



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, LRE, OLC, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution made on July 30, 2022. The Tenant applied for the following relief, pursuant to the Residential tenancy Act (the Act):

- an order cancelling a One Month Notice to End Tenancy for Cause dated July 27, 2022 (the One Month Notice);
- an order suspending or setting conditions on the Landlord's right to enter the rental unit;
- an order that the Landlord comply with the Act, Residential Tenancy Regulation, and/or the tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing and was assisted by AM, an advocate. The Landlord attended the hearing and was accompanied by CC, her spouse, and AC, a support person. The Tenant, the Landlord, and CC provided a solemn affirmation at the beginning of the hearing.

On behalf of the Tenant, AM advised that the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail on August 17, 2022. The Landlord confirmed receipt.

In addition, AM advised that a subsequent evidence package was served on the Landlord by registered mail on September 7, 2022. The Landlord confirmed receipt but testified the video files could not be viewed. AM advised that the Tenant was prepared to proceed without reliance on this video evidence.

The Landlord testified the evidence upon which they intended to rely was served on the Tenant by registered mail on September 15, 2022. TT acknowledged receipt.

No further issues were raised with respect to service or receipt of the above packages during the hearing. The parties were in attendance or were represented and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents, with the exception of the video evidence, were sufficiently served for the purposes of the Act.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The parties were advised that Rule of Procedure 2.3 permits arbitrators to exercise discretion and dismiss unrelated claims with or without leave to reapply. In this case, I find it appropriate to dismiss all but the Tenant's request for an order cancelling the One Month Notice, which is unrelated to the other claims. I have also considered the Tenant's request to recover the filing fee.

#### Issues to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice?
2. Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

The parties agreed the Tenant moved into the rental unit on June 30, 2021. Rent of \$1,000.00 per month is due on the first day of each month. The parties agreed the Tenant paid a security deposit of \$500.00, which the Landlord holds.

The parties agreed that the One Month Notice was served on the Tenant by email on July 27, 2022. The Tenant's application acknowledges receipt on that date. The One Month Notice is signed and dated by the Landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

The One Month Notice was issued on the basis 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 Landlord testified that on September 12, 2021, the Tenant was asked via text message not to use scented laundry products in the dryer due to the Landlord's allergy. The Landlord testified the Tenant appeared to be agreeable for a few weeks. However, on October 16, 2021, the Landlord had to send another text message to the Tenant, reminding her not to use heavily scented products in the laundry room. The Tenant responded by stating she no longer uses dryer sheets and uses the same detergent as always.

The Landlord testified that she suffered for more than a year and that on July 13, 2022, went to the laundry room and experienced an allergy attack due to the smell. The Landlord testified that she put up a sign in the laundry room as a further reminder. The Landlord testified that the Tenant sent the Landlord a text message which stated she continued to use the same product she had been using since the first time the issue was raised.

The Landlord testified that the Tenant's behaviour changed after July 13, 2022. On July 18, 2022, the Tenant requested the correct spelling of the name of the Landlord and her spouse, and a business registration number. The Landlord testified this came "as an extreme shock" and was "very disconcerting".

Copies of the text messages referred to above were submitted into evidence.

In reply, the Tenant testified that she completely understood the Landlord's concerns and acknowledged she was initially asked not to use scented products in the dryer. The Tenant testified that the text message reminder on October 16, 2021, only asked her not to use heavily scented products. The Tenant testified that the text message from the Landlord acknowledged that the previous tenants used scented laundry products and that it was not a problem.

The Tenant also acknowledged that on one occasion she used a heavily scented detergent as the Landlord was away but not in the dryer, which was believed to be the source of the smell in the Landlord's unit.

With respect to the Landlord's reference to July 13, 2022, the Tenant testified that she had been using the same soap for the previous year and that it had not been an issue. The Tenant testified she remembers coming home from work that day and heard a lot of noise from above, including stomping and raised noises.

The Tenant testified she never wanted to make Landlord feel bad and respects that she has a home to live in. The Tenant also testified that she has been using the laundromat since July 13, 2022, which was not disputed by the Landlord.

The Landlord testified that the Tenant's behaviour became "erratic" after July 13, 2022, making her feel uncomfortable. In a text message dated July 18, 2022, the Tenant raised issues related to noise from the Landlord's unit. The Tenant also advised that she had made audio recordings of the Landlord's family.

The Landlord also expressed concern about outdoor security cameras but acknowledged she had never seen one. She submitted copies of correspondence from the Residential Tenancy Branch and to the Tenant in support.

In reply, the Tenant testified that after the disagreement on July 13, 2022, the noise level from the Landlord's unit became "intense" and that the noise prevented her from mourning the death of a family member or napping when she wanted to. The noise continued until AC left a voice message for the Landlord.

The Tenant also testified the overall energy of the Landlord since July 13, 2022 has impacted her. As an example, the Tenant testified that on July 14, 2022, she returned home and found that access to her rental unit was blocked by the Landlord's trailer and vehicles. The Landlord denied this evidence.

With respect to the Landlord's assertion that the Tenant is making unauthorized recordings using a security camera, the Tenant acknowledged she has an indoor security camera that the Landlord was aware of soon after she moved into the rental unit. AM referred to an email to the Tenant dated July 22, 2022, in which the Landlord stated: "If you have indoor motion sensor security cameras, that is not something we would ever be concerned about, in fact we think its wise for safety." The Tenant

confirmed that she has not installed an outdoor security camera, and that she has not made any video recordings of the Landlord's family.

### Analysis

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

Section 47(1)(d) of the Act permits a landlord to take steps to end a tenancy for the reasons stated in the One Month Notice. The burden of providing evidence in support of the One Month Notice rests with the Landlord.

In this case, I find there is insufficient evidence before me to conclude that the Tenant's use of scented laundry products, security cameras, or audio recordings have significantly interfered with or unreasonably disturbed another occupant or the Landlord, or seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

While I accept that the Landlord suffers from allergies related to scented products, I find there is insufficient evidence before me to conclude that this issue was raised with the Tenant at the time the tenancy agreement was entered into or before September 12, 2021. I was also not referred to any evidence to indicate that the Landlord raised the issue with the Tenant from October 16, 2021 until July 13, 2022, a period of nine months. Indeed, the Tenant testified, and I accept, that she did what was requested and that no further issues were raised during this period. I also accept the Tenant's evidence that she has used a laundromat since July 13, 2022, thereby eliminating the possibility of further scent irritation.

In addition, I find there is insufficient evidence to conclude that the Tenant has installed outdoor security cameras, and that the Landlord does not have any issue with indoor security cameras. With respect to the Landlord's concerns about audio recordings, I find it is more likely than not that recordings of noise in her rental unit were made after July 13, 2022, in response to noises from the Landlord's unit above. However, audio recordings made to document a real or perceived breach of the Act are not a basis upon which to end a tenancy in these circumstances.

Considering the above, I find that the One Month Notice is cancelled and is of no force or effect. The tenancy will continue until otherwise ended in accordance with the Act.

As the Tenant has been successful, I find the Tenant is entitled to recover the \$100.00 filing fee. I order that \$100.00 may be deducted from a future rent payment at the Tenant's discretion.

### Conclusion

The One Month Notice is cancelled and is of no force or effect. The tenancy will continue until otherwise ended in accordance with the Act.

As the Tenant has been successful, I find the Tenant is entitled to recover the \$100.00 filing fee. I order that \$100.00 may be deducted from a future rent payment at the Tenant's discretion.

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: October 3, 2022

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Residential Tenancy Branch