



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNC, RR, RP, PSF, LRE, OLC, FFT**

### **Introduction**

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55;
- An order for a reduction of rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order for repairs to be made to the unit, site or property pursuant to section 32;
- An order that the landlord provide services or facilities required by the tenancy agreement pursuant to section 27;
- An order suspending the landlord’s right to enter the rental unit pursuant to section 70;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both parties attended the hearing and the landlord was represented by an agent, her property manager, HL (“landlord”). As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant’s Notice of Dispute Resolution Proceedings package and the tenant acknowledged service of the landlord’s evidence. Both parties stated they had no concerns with timely service of documents and were ready to proceed.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (“Rules”) and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

### Preliminary Issue

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. Rule of Procedure 6.2 allows an arbitrator to decline to hear or dismiss unrelated issues. At the commencement of the hearing, I determined that the issue of whether to uphold or cancel the landlord's notice to end tenancy was the primary issue before me and that the other issues listed on the tenant's application were not related and would be dismissed with leave to reapply. I agreed that if there was time left at the end of the hearing regarding the notice to end tenancy, I would consider the tenant's application seeking an order that the landlord comply with the Act under section 62.

During the hearing, the tenant advised that his application seeking repairs to be made to the unit under section 32 was resolved. I dismissed that portion of his application without leave to reapply.

### Issue(s) to be Decided

Should the landlord's notice to end tenancy for cause be upheld or cancelled?

If cancelled, should the landlord be ordered to comply with the Act?

Can the tenant recover the filing fee?

### Background and Evidence

The landlord gave the following testimony. The rental unit is the lower unit of her 100+ year old house; the landlord occupies the upper unit. The rental unit was vacant when she purchased it back in 2017 and the landlord sought out a tenant for the suite after purchasing the house. The tenancy began on February 1, 2018 with rent set at \$1,900.00. A second tenancy agreement was entered into on February 1, 2019 and that one was provided as evidence.

The landlord testified that they served the tenant with a 1 Month Notice to End Tenancy for Cause by posting a copy to the tenant's door on June 26, 2022. A copy was provided as evidence. The reason for ending the tenancy is because the rental unit/site must be vacated to comply with a government order. Under "details of cause" the landlord writes,

*The city sent a letter indicating the rental suite needs the city permission for legal suite. The owner must comply with this regulation and must remove the stove and the associated structures. The unit is not allowed to be rented anymore.*

The landlord testified that on June 20<sup>th</sup>, they received a letter from the city indicating that an illegal suite may have been constructed at the property without the required permits in contravention of the city's bylaws. It goes on to indicate that if the suite is legalized, the landlord must obtain a long-term rental license if the landlord intends to rent the suite. Alternatively, should the landlord remove the suite, permits will be required to remove the kitchen/cooking facilities. In the interim, the landlord was told to ensure the suite has minimum safety standards in place. The property use inspector followed up with an email to the landlord dated July 29, 2022 that states the city will "eventually" be asking the landlord to legalize the suite, or, if the landlord so chooses, remove the suite.

The landlord submits that the landlord has 2 choices: either legalize the illegal suite occupied by the tenant and his family or remove the suite. The landlord is choosing to do the latter to comply with the city's wishes. The landlord and the tenant have a toxic relationship, according to the landlord's agent. The landlord complains that she works from home and the tenant and his family being downstairs affects her privacy and the confidentiality of her conversations with clients. The tenant should go his separate way and not dispute the landlord's notice to end tenancy for cause. Once the tenant vacates the rental unit, the landlord does not plan on re-renting it. Instead, the landlord will take over occupancy of the entire house, both upstairs and downstairs.

The tenant gave the following testimony. He disputes the letter from the city as being an order to vacate the unit. Rather, it's an ordinance from the city telling her to make the illegal suite legal. Nowhere in the letter does it state or even imply that the tenant is required to vacate it.

The tenant had VK, the city inspector named in the letter from the city, come to the unit and the tenant videotaped the inspection. The tenant points out that the inspector comments that the fire alarms meet city codes, the windows are above grade and provide 2 points of egress in an emergency, so no fire safety issues. The space is large, not unhealthy or unsafe. In the video, the tenant asks the city inspector if there are major issues requiring the tenant to vacate and the inspector responds, "*no, we won't be doing anything right now. It'll be down the road.*" The inspector goes on to advise the tenant that there's not much to be done to bring it up to code.

The tenant argues that the landlord's characterization of the house as old and in need of repairs is misleading. It was fully renovated in 2017 and is in incredible shape. The lower unit is well taken care of and is both safe and functional. The reason the landlord is seeking to end the tenancy is because he asked the landlord to improve her property to stop flooding in the basement. Since then, the landlord's attitude towards him changed.

As I advised the parties at the commencement of the hearing, if there was time, I would consider the tenant's application for an order that the landlord comply with the Act. Regarding this issue, the tenant gave the following testimony. The landlord has been making loud, thumping, stomping noises at strange hours recently. The landlord purposefully does this to annoy the tenant and deprive him of his right to quiet enjoyment. In evidence, the tenant provided several videos of the tenant pacing during the early hours of the morning and late at night.

The landlord testified that the tenant brought his girlfriend to stay the night without her permission. This caused "banging sounds" that shook her house and her bed. The landlord stomped once against the floor to let them know her sleep was disturbed. The landlord hasn't been able to sleep as well and her health is jeopardized. She needs to take sleeping pills to help her sleep, too.

### Analysis

The tenant is deemed served with the landlord's 1 Month Notice to End Tenancy for Cause on June 29, 2022, three days after it was posted to his door on June 26<sup>th</sup> in accordance with sections 88 and 90 of the Act. The tenant filed his application to dispute the notice within 10 days, on July 4, 2022 in accordance with section 47 of the Act.

When a tenant disputes a landlord's notice to end tenancy, the onus falls upon the landlord to prove the reasons for ending the tenancy. The landlord relies on the letter from the city to establish that there is a government order that requires the rental unit be vacated to comply. I have reviewed the letter dated June 20, 2022, and the follow-up email dated July 29<sup>th</sup>. From the content of these letters, I do not find that the landlord was ordered to have the rental unit vacated to comply with a government order. Clearly, the property use inspectors told the landlord to legalize the illegal suite. The alternative to remove the suite was given by the city; however, this was not a directive or an order to comply given to the landlord. Simply put, the landlord was **never ordered** to remove the rental unit. It was an alternate option to complying with the true content of the letter – to legalize the suite and make it compliant with all city bylaws.

Consequently, I find there is no government order requiring the rental unit be vacated. The notice to end tenancy is cancelled and of no further force or effect.

Pursuant to section 28, a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- a) Reasonable privacy
- b) Freedom from unreasonable disturbance
- c) Exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29;
- d) Use of common areas for reasonable and lawful purposes, free from significant interference.

Having heard the testimony of both the tenant and the landlord and reviewing the video presented as evidence by the tenant, I find it more likely than not that the landlord made a conscious effort to disturb the tenant during the early hours of the morning and late at night, contrary to section 28(b). Pursuant to section 62, I order that the landlord comply with section 28 and protect the tenant's right to be free from unreasonable disturbance. Should the landlord continue to contravene section 28, the tenant is at liberty to seek compensation pursuant to sections 7 and 67 of the Act. Likewise, should the tenant significantly disturb the landlord, I note that section 47(d)(i) provides the landlord with the right to seek an end to the tenancy.

The tenant's application was successful and the filing fee shall be recovered. Pursuant to section 72, the tenant may reduce a single rent payment due to the landlord by \$100.00.

#### Conclusion

The notice to end tenancy is cancelled and of no further force or effect. The tenancy shall continue until it is ended in accordance 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: November 21, 2022

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Residential Tenancy Branch