# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes **TT: CNC MNDCT DRI PSF OLC FFT**
**LL: OPC FFL**

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the "Act"). The Tenant made one application ("Tenant's Application") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated August 4, 2022 ("1 Month Notice") pursuant to section 47;
- a monetary order for compensation from the Landlords pursuant to section 38;
- an order regarding a disputed rent increase pursuant to section 43;
- an order for the Landlords to provide services or facilities required by the tenancy agreement or law pursuant to section 65;
- an order that the Landlords comply with the Act, Residential Tenancy Regulations ("Regulations") or tenancy agreement pursuant to section 62; and
- authorization to recover the fling fee for the Tenant's Application from the Landlords pursuant to section 72.

The Landlords made one application ("Landlords' Application") for:

- an Order of Possession for cause pursuant to section 47; and
- authorization to recover the filing fee for the Landlords' Application from the Tenant pursuant to section 72.

The two Landlords ("GP" and "PP"), the Landlords' translator ("RK") and the Tenant attended this 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. A witness ("FA") attended the hearing when required to provide testimony on behalf of the Landlords.

The Tenant stated he served the Notice of Dispute Resolution Proceeding, an amendment to the Tenant's Application dated August 23, 2022 and his evidence (collectively the "Tenant's NDRP Package") on GP by registered mail on August 24, 2022. The Tenant provided the Canada Post tracking number for service of the Tenant's NDRP Package on GP to corroborate his testimony. I find the Tenant's NDRP Package was served on GP pursuant to the provisions of sections 88 and 89 of the Act.

GP stated he serve the Notice of Dispute Resolution Proceeding (Landlords' NDRP Package") on the Tenant by email sometime in October 2022 but he could not recall the date. GP did not provide any evidence the Tenant consented to service of documents under the Act by email. However, the Tenant acknowledged he received the Landlords' NDRP by email on October 24, 2022. As such, I find the Tenant was sufficiently served with the Landlords' NDRP Package pursuant to section 71(2)(b) of the Act.

Preliminary Matter – Service of Landlords' Evidence on the Tenant

GP stated he submitted evidence to the Residential Tenancy Branch ("RTB"). However, GP was unclear on whether he served the Landlords' evidence on the Tenant. The Tenant stated he did not receive any evidence from the Landlords. The records of the RTB indicate that the Landlords did not submit any evidence to the RTB for this proceeding.

Rule 3.15 of the Rules state:

> **3.15 Respondent's evidence provided in single package**
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> Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.
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> The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.
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> See also Rules 3.7 and 3.10.

The Tenant stated he did not receive any evidence from the Landlord. The records of the RTB indicate the Landlords did not submit any evidence for this proceeding. I find, on a balance of probabilities, the Landlords did not serve on the Tenant, or submitt to the RTB, any evidence for this proceeding. I told the Landlords they had the option of providing oral testimony at this hearing on the contents any evidence they failed to serve on the Tenant and submit to the RTB.

Preliminary Matter – Addition of PP as Respondent in Tenant's Application

GP stated PP, his wife, was also a landlord. GP requested I amend the Tenant's Application to add PP as a respondent to the Tenant's Application. The Tenant did not object to the request.

Rules 4.2 of the Rules states:

> **4.2 Amending an application at the hearing**
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> In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.
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> If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

With the consent of the Tenant, I order the Tenant's Application be amended to add PP as a respondent to the Tenant's Application. As PP was not named in the 1 Month Notice as a landlord and as PP was present at the hearing, I will not order the Tenant to serve his evidence on PP that would otherwise require an adjournment of the hearing.

Preliminary Matter – Severance and Dismissal of Claims in Tenant's Application

At the outset of the hearing, I observed the Tenant's Application included claims for (i) a monetary order for compensation from the Landlords; (ii) an order regarding a disputed rent increase; (iii) an order for the Landlords to provide services or facilities required by the tenancy agreement or law and; (iv) an order that the Landlords comply with the Act, Regulations or tenancy agreement (collectively the "Tenant's Other Claims").

Rule 2.3 of the Rules states:

> 2.3 **Related issues**
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> Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the Residential Tenancy Branch ("RTB") are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

This hearing was scheduled for one hour. At the outset of the hearing, I advised the parties the primary issues in the Tenant's Application were whether the tenancy would continue or end based on the 1 Month Notice and whether the Tenant was entitled to recover the filing fee for the Tenant's Application from the Landlords. Accordingly, I find the Tenant's Other Claims were not sufficiently related to the primary issues of whether the 2 Month Notice would be cancelled and whether the Tenant was entitled to recover the filing fee for the Tenant's Application. Based on the above, I will dismiss the Tenant's Other Claims, with or without leave, depending upon whether I cancel the 1 Month Notice.

Issues to be Decided

- Is the Tenant entitled to cancellation of the 1 Month Notice?
- Is the Tenant entitled to recover the filing fee for the Tenant's Application from the Landlords?
- If the Tenant is not entitled to cancellation of the 1 Month Notice, are the Landlords entitled to an Order of Possession?

- If the Tenant is not entitled to cancellation of the 1 Month Notice, are the Landlords entitled to recover the filing fee for the Landlords' Application from the Tenant?

Background and Evidence

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

GP stated there was a written tenancy agreement. However, the Tenant stated he did not sign a tenancy agreement. As noted above, the Landlords did not submit any evidence to the RTB for this proceeding. I find, on a balance of probabilities, there was no written tenancy agreement for this tenancy and that the tenancy was an oral agreement between the parties. The parties agreed the tenancy commenced on February 1, 2022 with rent of $850.00 payable on the 1st day of each month. The Tenant stated he paid a security deposit of $425.00. GP stated he could not recall if the Tenant paid a deposit. As the matter of whether the Tenant paid or did not pay a deposit is not relevant to the issues before me, I make no determination on whether the Tenant paid a deposit to the Landlords.

The Tenant submitted into evidence a copy of the 1 Month Notice. GP stated he served the 1 Month Notice on the Tenant in-person on August 4, 202. The Tenant acknowledged receiving the 1 Month Notice. I find the 1 Month Notice was served on the Tenant in accordance with the provisions of section 88 of the Act.

The 1 Month Notice stated the cause for ending the tenancy was because "the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.". The details of the event relating to the cause for ending the tenancy stated in the 1 Month Notice were:

> Tennant is repeatedly disturbing other tenents. Entering the upstair premises without permission or knowing trespassing the other tenants house. Blocking Parking and making other tenents feel uneasy uncomfortable

GP stated new tenants ("New Upper Tenants) moved into the upper unit of the residential premises. GP stated the Tenant is not permitted to use the laundry room on the lower floor. GP stated the Tenant has been gaining access to the laundry room by asking the New Upper Tenants to leave the door unlocked to the laundry room. GP stated the New Upper Tenants do not want the Tenant to use the laundry room and feel uncomfortable with him using it. GP stated he asked the Tenant not to use the laundry room but did not give the Tenant written notice that he was no longer permitted to use the laundry room.

GP stated the Tenant does not have permission to use the driveway to park a car. GP stated that, on one occasion, the Tenant parked a car behind the New Upper Tenant's car. GP stated an emergency arose and one of the New Upper Tenants was unable to get out of the driveway to go to the hospital. GP stated the Landlords did not give notice to the Tenant that he is not to park in the driveway.

GP stated that the Tenant has disturbed the New Upper Tenants with excessive noise from his rental unit. GP stated he has not given the Tenant a written notice that he is not to disturb the New Upper Tenants with excessive noise.

The Tenant stated the previous upper tenants permitted him to use the washer and dryer. The Tenant stated the laundry room has a door with a lock on his side of the room but there is no door on the other side. The Tenant stated the New Upper Tenants have permitted him to use the laundry room on several occasions but they no longer want him to use the laundry room. The Tenant denied he has entered the upper floor. The Tenant stated he does not disturb the New Upper Tenants with excess noise.

The Tenant stated a friend visited him and he parked his car behind the New Upper Tenants' car. The Tenant stated he and his friend went for a walk. The Tenant stated that, when they return to the residential property, there were two polices cars. The Tenant stated his friend moved the car but the persons in the New Upper Tenants' car did not leave for 5 or 10 minutes.

FA was called to provide her testimony. FA stated she is one of the New Upper Tenants who have moved into the upper unit recently. FA stated she sometimes hears some music but it does not matter because she has five children and they make some noise as well. FA stated the problem she had with the Tenant was that he parked a car behind her car late one evening. FA stated she had a medical procedure and she was feeling pain during the middle of the night. FA stated she wanted to go to the hospital but she could not get her car out because of the car parked behind her car. FA stated the police were called . FA stated they police offered her a ride to the hospital but by then the pain she felt had decreased. FA stated that after about one hour the Tenant came with his friend and the car was moved out of the way. FA stated the New Upstairs Tenants have permitted the Tenant on several occasions, as a courtesy to use the laundry room. FA stated the door was unlocked to the laundry room and the Tenant did not knock on the door to alert her that he was going to enter the laundry room. FA stated the Tenant surprised her and it made her feel uncomfortable that he was entering in the circumstances that existed at the time of his entry.

Analysis

I found the testimony of the GP to be evasive and self-serving. I found the testimony of the Tenant credible and forthcoming. I also found the testimony of FA to be credible and forthcoming, particularly having regard to the complaints made by the Landlords to justify the cause for ending the tenancy when considered against the testimony provided by FA. As such, I have placed less weight on GP's testimony.

As noted above, I have found there is no written tenancy agreement between the Landlords and Tenant. Sections 12, 13(1), (13(3) and 27(1) of the Act state:

12 The standard terms are terms of every tenancy agreement
- (a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and
- (b) whether or not the tenancy agreement is in writing.

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

13(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

27(1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

The Tenant stated he did not sign a tenancy agreement. As such, I find the Landlords did not comply with the requirements of sections 13(1) or 13(3) of the Act. Pursuant to section 12 of the Act, whether or not the tenancy is in writing, the standard terms ("Standard Terms") are incorporated into every tenancy agreement. The Standard Term are set out in the Schedule to the Residential Tenancy Act. The Standard Terms do not give the Tenant the right to laundry facilities or parking on the residential property. As such, the Tenant did not have a legal right to use the laundry facilities or permit him or his guests to park on the residential property. Pursuant to section 27(1) a landlord may not terminate essential services. Essential services include electrical service, cold and hot water, heat and garbage collection.

Subsections 47(1)(d)(i) 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:

[…]

(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, or

[…]

(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.

The 1 Month Notice was served on the Tenant in-person on August 4, 2022. Pursuant to section 47(4) of the Act, the Tenant had until August 15, 2022, being the next business after the expiry of the 10-day dispute period, to make an application for dispute resolution to dispute the 1 Month Notice. The records of the RTB disclose the Tenant's Application was made on August 5, 2022. As such, the Tenant's Application was made within the 10-day dispute period required by section 47(4) of the Act.

GP stated the Tenant is not permitted to use the laundry room on the lower floor of the residential premises. GP stated the Tenant has been gaining access to the laundry room by asking the New Upper Tenants to leave the door unlocked to the laundry room. GP stated the New Upper Tenants do not want the Tenant to use the laundry room and feel uncomfortable with him using it. GP stated that he asked the Tenant not to use the laundry room but did not give the Tenant written notice that he was no longer permitted to use the laundry room. The Tenant stated the previous upper tenants permitted him to use the washer and dryer. The Tenant stated the new Upper Tenants have permitted him to use the laundry room on several occasions. FA stated the Upper Tenants had permitted the Tenant, as a courtesy, to use the laundry room on several occasions. FA stated that on one occasion, the Tenant did not knock on the laundry room door and entered while she was using the laundry room. FA stated the Tenant surprised her and it made her feel uncomfortable that he was entering in the circumstances that existed at the time of his entry.

GP stated the Tenant does not have permission to use the driveway to park a car. GP stated that on one occasion the Tenant had a car parked behind the New Upper Tenant's car. GP stated an emergency arose and one of the New Upper Tenants was unable to get out of the driveway to go to the hospital. GP stated the Landlords did not give notice to the Tenant that he is not to park in the driveway. FA stated she wanted to go to the hospital but she could not get her car out because of the car parked behind her car. FA admitted the police offered her a ride to the hospital but by then the pain she felt had decreased. FA stated that, after about one hour, the Tenant came with his friend and the car was moved out of the way.

I note that subsection 47(1)(d)(i) uses the adjective "significantly" as part of the cause stated in this subsection. This means a landlord must prove the activity, behavior or misconduct of the tenant must be sufficient to warrant an eviction of the Tenant.

Although the Tenant did not have the right to use the laundry facilities in the residential premises, the Tenant stated the former upper tenants and the New Upper Tenants have given him access to the laundry facilities as a courtesy. There was one incident in which FA was surprised and felt uncomfortable when the Tenant entered the laundry room without knocking on the door. GP admitted the Landlords have not given the Tenant a written notice stating the Landlords requires the Tenant to discontinue using the laundry room. As such, I find the Landlords has not demonstrated, on a balance of probabilities, that the Tenant has significantly interfered with another occupant of the residential property in respect of this incident.

GP stated the Tenant had significantly disturbed the New Upper Tenants. FA stated she sometimes hears some music but it does not matter because she has five children and they make some noise as well. FA did not provide any testimony that she or the other Upper Tenants were being unreasonably disturbed by the Tenant playing music. GP admitted the Landlords have not given the Tenant a written notice to warn him that his music was disturbing the New Upper Tenants. As such, I find the Landlords have not demonstrated, on a balance of probabilities, that the Tenant has significantly disturbed the Upper Tenants with noise.

GP stated the Tenant, or a guest, parked a car behind the New Upstairs' Tenants Car and a medical emergency arose. FA stated she wanted to go to the hospital but she could not get her car out because of the car parked behinds her car. FA stated the police were called and they offered her a ride to the hospital but by then the pain she felt had decreased. FA stated that after about one hour the Tenant came with his friend

and the car was moved out of the way. The Tenant stated the hospital is only two hundred metres away and this testimony was not disputed. Although this was an unfortunate incident, and without diminishing the pain and discomfort FA was suffering at the time, she did have the option of going with the police to the hospital if the emergency had continued. I also note GP admitted the Landlords did not give the Tenant a written notice warning him that he and his guests are not to use the driveway of the residential premises. As such, I find, on a balance of probabilities, that this incident did not reach the threshold of "significant" interference to another occupant of the residential premises in respect of this incident.

Based on the foregoing, I find the Landlords have not proven, on a balance of probabilities, that the Tenant has beached section 41(1)(d)(i) of the Act. As such, I order the 1 Month Notice to be cancelled. The tenancy will continue until it is lawfully ended in accordance with the provisions of the Act.

As the Tenant has been successful in the Application, I grant the Tenant recovery of the filing fee of $100.00 pursuant to subsection 72(1) of the Act. Pursuant section 72(2)(a) of the Act, the Tenant is allowed to enforce this order by deducting $100.00 from the next month's rent, notifying the Landlords when this deduction is made. The Landlords may not serve the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenant.

As I have cancelled the 1 Month Notice, I dismiss the Tenant's Other Claims with leave to reapply. The Tenant has the option of making a new application for dispute resolution to make the Tenant's Other Claims.

As noted above, the Tenant does not have the right to laundry facilities or to parking on the residential property. If the Tenant has any questions regarding his rights and obligations pursuant to the Standard Terms, he may refer to the RTB's website or call the Contact Centre at the email address and phone numbers set out on the last page of this decision.

Although the Tenant did not provide testimony at the hearing about attempts by the Landlords to obtain additional rent from him, the Tenant submitted a text message in which he refers to the Landlords attempting get the Tenant to pay $1,250.00 per month for rent. There are also text messages between the Landlord and a person, who identifies himself as the Tenant's uncle, in which that person is alleging the Landlord was harassing the Tenant to pay more rent. As the Tenant did not provide any testimony at the hearing on these matters, I have not relied on those text messages to

make my decision. However, I draw the Landlord's attention to the provisions of Part 3 of the Act and Part 4 of the *Residential Tenancy Regulations* ("Regulations") that stipulate the procedures and the maximum amount for rent increases. If the Landlord has any questions regarding his rights and obligations respecting rent increases, or the right of a tenant to quiet enjoyment of the rental unit, then he may refer to the RTB's website or call Contact Centre at the email address and phone numbers set out on the last page of this decision.

Conclusion

The 1 Month Notice is cancelled and of no force or effect. The tenancy will continue until it is lawfully ended in accordance with the provisions of the Act.
The Tenant is ordered to deduct $100.00 from next month's rent in satisfaction of his monetary award for recovery of the filing fee.

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: January 6, 2023

Residential Tenancy Branch