



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ORCHARD CITY ABBEYFIELD  
SOCIETY and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      CNC, MNDCT, PSF, OLC

### **Introduction**

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant August 06, 2022 (the “Application”). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated July 28, 2022 (the “Notice”)
- For compensation for monetary loss or other money owed
- For an order that the Landlord provide services or facilities required by the tenancy agreement or law
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement

The Tenant appeared at the hearing with Legal Counsel and F.F. as a witness. F.F. exited the hearing until required. I did not hear from F.F. because I was not satisfied F.F. could provide evidence that was sufficiently compelling as to be relevant on this hearing. This was because F.F. only knew about the incidents that lead to the Notice through the Tenant. F.F. did not have any personal knowledge of the incidents.

J.M. and G.M. appeared at the hearing for the Landlord. J.M. confirmed the correct name of the Landlord which is reflected in the style of cause.

I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules, I told the Tenant at the outset of the hearing that I would consider the dispute of the Notice and dismiss the remaining requests because they are not sufficiently related to the dispute of the Notice. The remaining requests are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. J.M. confirmed receipt of the hearing package and Tenant’s evidence. J.M. had received the Tenant’s evidence December 20, 2022, and December 23, 2022. J.M. agreed the package received December 23, 2022, relates to the Tenant’s compensation request and therefore is not relevant on this hearing. I have not considered the Tenant’s evidence submitted December 22, 2022, because it relates to the compensation request.

The Tenant and Legal Counsel confirmed receipt of the Landlord’s evidence and took no issue with service other than in relation to a package received January 02, 2023, and therefore late. The package is five pages and in response to some of the Tenant’s evidence. Legal Counsel submitted that the late evidence should be excluded.

In reply, J.M. testified that the package of evidence was sent in response to the Tenant’s evidence and was late due to it being Christmas time, the Landlord needing time to review the Tenant’s materials and the time it took to contact the individuals who provided the evidence. J.M. submitted that the evidence is important because it shows the Tenant has falsified evidence.

The Landlord did not comply with rule 3.15 of the Rules in relation to the five-page package of evidence. Pursuant to rule 3.17 of the Rules, I exclude the evidence because it was only served three days before the hearing, and I am not satisfied the Tenant has had an adequate opportunity to review and respond to the evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all admissible relevant evidence provided. I will only refer to the evidence I find relevant in this decision.

### **Issues to be Decided**

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

### **Background and Evidence**

A written tenancy agreement was submitted. The tenancy started June 18, 2022.

The Notice was submitted. The grounds for the Notice are:

1. Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.
2. Breach of a material term.

The “Details of the Events” on the Notice are too small to read. Once the Tenant retained Legal Counsel, Legal Counsel asked the Landlord for a readable copy of the “Details of the Events” which was provided and is before me as a word document.

The Tenant took issue with the Notice and whether it complies with section 52 of the *Act* because the “Details of the Events” are too small to read.

J.M. testified that the Notice was posted to the Tenant’s door July 28, 2022. The Tenant confirmed receipt of the Notice July 29, 2022.

The “Details of the Events” are very detailed; however, can be summarized as follows:

- Issues around meals served by the Landlord – the Tenant wanting them saved, not eating meals at the set time and wanting meals in their room
- The Tenant not allowing their room to be cleaned by the Landlord’s staff in breach of section 4.4 of the tenancy agreement
- The Tenant using laundry machines when they are not supposed to or turning other people’s laundry off
- The Tenant taking and using another tenant’s items (related to doing laundry)

- The Tenant taking bleach from the staff closet and using other tenant's bowls for bleach (related to doing laundry)
- The Tenant unplugging a phone that is in a common area and used by staff
- Three complaints of heavy shoes, door slamming and moving boxes or furniture in early morning hours
- The Tenant using the patio door to enter and exit the house which means the patio door is left unlocked which is a security and safety concern
- The Tenant broadcasting on a radio station from their room which the Landlord says is running a business from their room in breach of section 19 of the tenancy agreement
- The Tenant breaching section 18 of the tenancy agreement in relation to their conduct and affecting the quiet enjoyment of other tenants

J.M. confirmed the above issues are the basis for the Notice. J.M. testified that the Tenant has caused a lot of other issues throughout the tenancy. I understood J.M. to say the above is an example of the issues the Tenant is causing. J.M. advised that the Notice is the first One Month Notice to End Tenancy for Cause the Tenant has been issued for the above behaviour; however, the Tenant has been issued warning letters about the behaviour. J.M. testified that the issues have not been resolved and have in fact continued and escalated. J.M. pointed out that the Tenant is still receiving business mail at the rental unit and therefore is obviously conducting business out of the rental unit. J.M. submitted that the Tenant is breaching sections 4, 9, 13, 15, 18 and 19 of the tenancy agreement.

The Landlord submitted documentary evidence to support their position. I have read all of the admissible documentary evidence including the Affidavit of M.D.S.D., incident reports, emails, complaint letters and statements.

The Tenant provided general information about the issues raised by the Landlord; however, very little of the Tenant's submissions addressed the allegations of the Landlord.

The Tenant testified as follows. The Tenant cannot eat meals at the set times due to their work, this was explained to staff and an agreement was reached about meals. Other tenants threatened the Tenant on July 25<sup>th</sup>, and the Tenant was told not to have contact with them which is why the Tenant needs to have meals in their room. The Tenant's room was previously being cleaned but this stopped for an unknown reason. However, the garbage is still removed from the Tenant's room. The Tenant and

Landlord agreed the Tenant's room would be cleaned every Thursday; however, nobody showed up. The Tenant hired their own cleaner two days ago so this should not be an issue moving forward. The Tenant took a cup from the kitchen to put bleach in because the cup was unmarked, and they thought it belonged to the Landlord. The Tenant is not running a business out of their room. The Tenant is aware other tenants are sleeping when they arrive home and are careful not to be noisy. The Tenant has been careful not to disrupt other tenants. The Tenant does not slam doors and is as quiet as possible.

Legal Counsel submitted that the bar for eviction is much higher than the grounds alleged by the Landlord.

J.M. provided a reply to the Tenant's testimony and submissions which I do not find necessary to detail here because it was again simply disputing the Tenant's points.

### **Analysis**

The Notice was issued pursuant to section 47 of the *Act*.

The Tenant had 10 days from receiving the Notice to dispute it pursuant to section 47(4) of the *Act*. I accept based on the evidence of both parties that the Tenant received the Notice July 29, 2022. The Application was filed August 06, 2022, within time.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I am not satisfied based on the evidence provided that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. This is a high bar given the words "significantly" and "unreasonably". Further, I must consider what is stated on the Notice. I must consider whether the Landlord had grounds to issue the Notice on July 28, 2022, when the Notice was served. Subsequent issues with the Tenant cannot form grounds for the Notice.

I have read the "Details of the Events" included on the Notice and it is these I must consider. I do not find the issues listed in the "Details of the Events" serious enough to end this tenancy. The only issue raised in the "Details of the Events" that could justify ending this tenancy for significant interference or unreasonable disturbance is the noise

issue. The Tenant denies that they are making noise and disturbing others. The evidence about noise prior to the Notice being issued is the Affidavit of M.D.S.D., an Incident Report and a statement from T.V. I am not satisfied based on the evidence provided that the Tenant causing noise disturbances was a pattern prior to the Notice being issued or that it affected numerous tenants such that it can be described as significant.

I acknowledge that there is evidence of the Tenant yelling, being aggressive and swearing at other tenants and staff in the Landlord's evidence. However, there is no mention of these behaviours in the Notice and therefore I decline to uphold the Notice based on these. Further, much of the Landlord's evidence is from incidents after the Notice was issued which cannot form the grounds for the Notice.

In relation to breach of a material term, RTB Policy Guideline 08 states:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- **that they believe the problem is a breach of a material term of the tenancy agreement;**
- that the problem must be fixed by a **deadline** included in the letter, and that the deadline be reasonable; and
- **that if the problem is not fixed by the deadline, the party will end the tenancy.**

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

(emphasis added)

I have reviewed the Landlord's evidence and do not see where in it there is written correspondence to the Tenant outlining the above – that the Tenant has “breached a **material term** of the tenancy agreement”, that the problem must be fixed by a **deadline** and that if the problem is not fixed by the deadline, the Landlord **will end the tenancy**.

Given this, I am not satisfied based on the evidence provided that the Landlord had grounds to end this tenancy based on breach of a material term when the Notice was issued. I also note that it is not all terms of a tenancy agreement that can lead to a tenancy ending for this reason, it must be a breach of a **material term** which is defined in RTB Policy Guideline 08.

Given the above, I am not satisfied the Landlord has proven the grounds for the Notice. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

### **Conclusion**

The Application is granted. The Notice is cancelled. The tenancy will continue until 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 *Act*.

Dated: January 09, 2023

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Residential Tenancy Branch