



# 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 for cancellation of a One Month Notice to End Tenancy for Cause ("One Month Notice").

Both parties appeared or were represented at the hearing. The parties were affirmed. Both parties had the opportunity to present their evidence and make relevant submissions.

The hearing was held over two dates and an Interim Decision was issued on October 11, 2022. The Interim Decision should be read in conjunction with this decision.

At the reconvened hearing, the landlord was represented by her cousin who has been acting as the landlord's agent throughout the tenancy. As seen in the Interim Decision, I had required that any person appearing on behalf of the landlord at the reconvened hearing be either proficient in speaking English or appear with a translator. I found the landlord's agent appearing at the reconvened hearing was sufficiently proficient in speaking English.

As seen in the Interim Decision, I had authorized the tenant to submit additional evidence during the period of adjournment. Shortly after the reconvened hearing started, I noted that I had not received any additional evidence from the tenant and the tenant confirmed she did not submit any. As such, I have only considered the evidence served and submitted up to the first hearing date of October 11, 2022.

### Issue(s) to be Decided

Should the One Month notice be upheld or cancelled?

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy started on April 15, 2020. The tenant paid a security deposit of \$1000.00 and a pet damage deposit of \$500.00. the monthly rent is set at \$2950.00, due on the first day of every month.

Throughout the tenancy, the landlord has been represented by an agent, the landlord's cousin, who resides approximately 300 meters from the rental unit. The landlord resides overseas. The rental unit is a single family dwelling.

The subject One Month Notice was served upon the tenant's son on August 15, 2022. The tenant submitted that her son was only 18 years old at the time and was upset to receive the One Month Notice; however, the tenant acknowledged receiving the One Month Notice from her son later that same day and the tenant proceeded to file this Application for Dispute Resolution. Since the tenant acknowledged receipt of the One Month Notice and filed to dispute the One Month Notice within the time limit for doing so, I deemed the tenant sufficiently served pursuant to the authority afforded me under section 71 of the Act.

The One Month Notice indicates the following reasons for ending the tenancy:

Reason for this One Month's Notice to End Tenancy: (check all boxes that apply)	
<input type="checkbox"/>	Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.
<input type="checkbox"/>	Tenant is repeatedly late paying rent
<input checked="" type="checkbox"/>	Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
<input checked="" type="checkbox"/>	significantly interfered with or unreasonably disturbed another occupant or the landlord.
<input type="checkbox"/>	seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
<input checked="" type="checkbox"/>	put the landlord's property at significant risk
<input type="checkbox"/>	Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended.
<input type="checkbox"/>	Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property
<input type="checkbox"/>	Tenant or a person permitted on the property by the 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 of the landlord.
<input type="checkbox"/>	Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.
<input type="checkbox"/>	Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
<input type="checkbox"/>	Tenant has not done required repairs of damage to the unit/site/property/park
<input checked="" type="checkbox"/>	Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the Details of Cause, the landlord wrote (with tenant's name and landlord's signature omitted by me for privacy purposes):

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.
<p>Details of the Event(s):</p> <p>Mrs. [REDACTED] run her dog grooming business in the property which was not indicated when signing the residential tenancy agreement. She had been gotten the neighbors complaining for her dogs barking for many times.</p> <p><i>The property was rented to her for residential purposes ONLY, but she is running a business which causes nuisance and disturbance to the neighbours.</i></p>

## **Landlord's position**

In support of the reasons provided on the One Month Notice, the landlord's agent submitted that when the tenancy formed the tenant did not indicate she intended to run a business from the property. The landlord's agent became aware of the business shortly after the tenancy started and enquired with the tenant the nature of the business. The tenant informed the landlord's agent she was performing dog grooming services and that there would be no damage to the property. The landlord's agent accepted the tenant's explanation and did not make any further enquiries or demands of the tenant until complaints were received from neighbours.

The landlord's agent submitted that three different neighbours reached out to the landlord's agent on a social messaging platform and complained of a broken fence between the rental unit and the neighbour's lot as well as a lot of dog barking. The landlord's agent submitted that the neighbours have complained that they are not able to have peace and quiet enjoyment of their backyard due to the dogs barking, or the inside of their homes to take a nap during the day due to the dogs barking. The landlord's agent submitted that up to 7 dogs were seen in the back yard at once.

Further, the neighbours complained to the City bylaw department. The landlord stated the City bylaw department did not respond to the complaining neighbours and the landlord's agent did not know the reason for City's non-response. The landlord's agent acknowledged that she did not make any enquiries with the City by-law department with respect to the tenant violating any by-laws.

The landlord's agent submitted that she sent emails to the tenant with respect to the neighbours' complaints and the tenant's dog grooming business. The landlord's agent pointed to three particular emails, as follows:

1. An email dated April 7, 2021 whereby the tenant was informed the neighbours had complained of the dogs barking.
2. An email dated April 30, 2021 whereby the tenant is instructed to fix the fence.
3. An email dated June 7, 2022 whereby the tenant was instructed to move her home and business from the rental unit.

The landlord's agent acknowledged she did not specifically ask the tenant to cease operating the dog grooming business in order to continue the tenancy.

The landlord's agent stated that she went to the property on the morning of the reconvened hearing and noticed the backyard was down to bare earth and no longer had the nice lawn that it once did. The landlord's agent suggested that the house may smell as a result of the dogs.

### **Tenant's position**

The tenant acknowledged that when the tenancy formed there was no mention of running a business in the rental unit because the tenant was not running a business at that time. However, shortly after the tenancy started the tenant needed to find a different source of income due to the Covid-19 pandemic. The tenant began operating a dog grooming business, which she does in the laundry room of the rental unit, and pet sitting services. The tenant resides in the rental unit with her spouse and son.

The tenant submitted that when the landlord's agent enquired about the business the tenant informed the landlord's agent what she was doing and the landlord's agent even had her own dog groomed by the tenant at the rental unit.

The tenant described how she has two dogs of her own and she takes in dogs for grooming appointments and pet sitting. Most often the dogs in for grooming or pet sitting will be brought in by the client in the morning and picked up in the late afternoon. The number of dogs at the property fluctuates depending on the number of dogs she is grooming on a given day. Some days, such as weekends, there are no other dogs on the property other than the tenant's dogs and on other days there have been 7 dogs, with Fridays being the busiest day of the week.

The tenant acknowledged she received the emails the landlord's agent pointed to and in response to the emails the tenant:

1. Worked with a trainer in an effort to better control the barking of the two dogs that are the most likely to bark. The training was somewhat effective; however, if the dog is taunted or triggered by something such as a door bell, the dog will bark. The tenant stated that if the dogs start barking she will command them to stop and if that does not work she will bring them inside after a few minutes.
2. The wood fence panels were already rotten and fell apart due to rot and wind; however, to ensure the dogs remain contained in the yard of the rental unit the tenant supported the boards by chicken wire.
3. The tenant tried to find commercial space for the dog grooming business; however, suitable space could not be found. The tenant also wants to bring the

tenancy to an end and purchase her own house but requested an extension to move out to May 31, 2024.

With respect to complaints to the City by-law department, the tenant stated that the City surveilled her property and then inspected the property. The tenant's business was found to be compliant with the by-laws as she had a business license and the inspector was satisfied the dogs were not creating excessive noise. Rather, the dogs were making noise intermittently and in response to normal stimuli such as knocking on the door.

The tenant pointed out that the rental unit, and the neighbouring properties, back onto a school and there is often noise from the school and other barking dogs in the neighbourhood. The tenant believes the complaints are originating from one neighbour in particular and that the dispute arose over the rotten fence panels.

As for the backyard lawn, the tenant acknowledged that the dogs have caused damage to the lawn. The tenant acknowledges that it is her responsibility to rectify the lawn damage. The tenant pointed out that she previously had new sod installed, on her own volition and at her cost, to rectify the lawn damage; however, that sod was subsequently damaged and the tenant acknowledged she must have the lawn repaired or replaced again before the tenancy ends.

### Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice. Where multiple reasons are indicated on the notice to end tenancy it is sufficient to end the tenancy where only one of the reasons is proven. The landlord's burden of proof is based on the balance of probabilities.

The One Month Notice before me provides three reasons for ending the tenancy that correspond to section 47 of the Act. Below, I analyze each of the three reasons.

The first reason for ending the tenancy is found in section 47(1)(d)(i), which provides that a tenancy may be ended where:

(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 of the residential property.

[My emphasis underlined]

In order to end the tenancy under section 47(1)(d)(i), the landlord must prove that other occupants or the landlord **of the residential property** are unreasonably disturbed or significantly interred with by the tenant's actions or neglect, or those of a person permitted on the property by the tenant.

"Residential property" is defined in section 1 of the Act and means the parcel of land on which the rental unit is located.

I have heard disputed evidence that there is excessive barking coming from the tenant's dogs and the dogs the tenant permits to be brought onto the residential property. I accept that excessive barking would be considered unreasonable disturbance; however, I have not heard that occupants of the residential property, or the landlord of the subject property, are being unreasonably disturbed. Rather, the evidence presented by the landlord is that the neighbours are being disturbed by dog barking and considering this is a single family dwelling, and the landlord's agent did not suggest the neighbours' homes are on the same parcel of land as the rental unit, I assume that the neighbours' homes are located on different parcels of land than the rental unit. This means the neighbours are not occupants of the "residential property" and their disturbance is not grounds for the landlord to end the tenancy under section 47(1)(d)(i) of the Act.

The second reason indicated on the One Month Notice is that the tenant has put the landlord's property at significant risk. This reason corresponds to section 47(1)(d)(iii) of the Act, which provides that the tenancy may be ended where:

(d) the tenant or a person permitted on the residential property by the tenant has

(iii) put the landlord's property at significant risk;

I find the landlord did not specify the risk or how the tenant is putting the landlord's property at significant risk in the details of cause section of the One Month Notice. To end the tenancy, the reason must be sufficiently described on the notice to end tenancy and where a landlord seeks to end the tenancy for "significant risk" to the landlord's property I would expect the landlord would identify the nature of the risk on the notice

and how the tenant's actions are putting the property at significant risk. During the hearing, the landlord's agent did describe finding the lawn to be damaged on the day of the hearing but damage was not identified as being the "significant risk" to the property on the One Month Notice that is before me. Therefore, I find the landlord failed to sufficiently identify the nature of the "significant risk" to the landlord's property in issuing the One Month Notice.

The third reason for ending the tenancy corresponds to section 47(1)(h) of the Act, which provides that the tenancy may be ended where:

(h) the tenant

- (i) has failed to comply with a material term, and
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

[My emphasis underlined]

To end the tenancy under section 47(1)(h) of the Act, the landlord must prove the tenant is breaching a term in the tenancy agreement, and that the term is a material term. The landlord did not point to any particular term in the tenancy agreement that the tenant is allegedly breaching and I do not see any term that deals with the tenant running a home based business from the rental unit or the prohibition of animals on the property. Therefore, I find the landlord did not establish the tenant to be in breach of a material term of the tenancy agreement.

Although the landlord's agent submitted that she found the lawn to be damaged on the day of the hearing, this was not a reason identified on the One Month Notice and I do not consider that submission further. However, in keeping with the tenant's obligations to repair and maintain the property, as provided under sections 32 and 37 of the Act, the tenant remains responsible for rectifying any damage caused by the tenants, the person they permit on the property, including their pets.

Given the above, I find the landlord did not sufficiently establish that the tenancy should end for the reasons indicated on the One Month Notice that is before me and I grant the tenant's request for cancellation of the One Month Notice.

The One Month Notice is cancelled and the tenancy continues at this time.



Since the tenant was successful in this application, I award the tenant recovery of the filing fee she paid. The tenant is authorized to deduct \$100.00 from a subsequent month's rent payment in satisfaction of this award and in doing so the landlord must consider the rent to be paid in full.

### Conclusion

The One Month Notice is cancelled and the tenancy continues at this time.

The tenant is awarded recovery of the filing fee that may be satisfied by deducting \$100.00 from a subsequent month's rent.

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: February 23, 2023

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Residential Tenancy Branch