



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NAI GODDARD AND SMITH REALTY SERVICES  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

CNC, FFT

### **Introduction**

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a One Month Notice to End Tenancy for Cause and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on October 08, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in September of 2022 were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On December 22, 2022 and December 30, 2022, the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on December 30, 2022. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On January 20, 2023 and January 22, 2023, the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on January 25, 2023 and by email on January 31, 2023. The Agent for the Landlord acknowledged receiving this evidence and she stated that she has had sufficient time to consider it. This evidence was therefore accepted as evidence for these proceedings.

On January 26, 2023, the Landlord submitted additional evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via

registered mail, on January 17, 2023. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On January 31, 2023, the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord by email on January 31, 2023. The Agent for the Landlord acknowledged receiving this evidence and she stated that she has had sufficient time to consider it. This evidence was therefore accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

#### Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

#### Background and Evidence

The Agent for the Landlord and the Tenant agree that:

- this tenancy began in 2021;
- rent is due by the first day of each month;
- the garage door was damaged during the tenancy;
- a One Month Notice to End Tenancy for Cause was posted on the door of the rental unit on September 23, 2022;
- the One Month Notice to End Tenancy for Cause declared that the rental unit must be vacated by October 31, 2022;
- the Tenant is still living in the rental unit; and
- the One Month Notice to End Tenancy for Cause declares that the tenancy is ending because the tenant or a person permitted on the property by the tenant

has caused extraordinary damage.

In regard to the garage door, the Tenant stated that:

- sometime in November of 2021 the garage door was damaged when she was backing her vehicle out of the garage;
- the garage door, which is on a timer, began closing without her knowledge;
- she was not aware of the timer feature on the door;
- she was not aware that the garage door was closing;
- her vehicle hit the garage door;
- she initially agreed to pay for the cost of repairing the damaged door;
- she subsequently rescinded the offer to pay for the repair of the door; and
- she told the Agent for the Landlord that she would pay for the door if she was found liable for the damage; and
- the Agent for the Landlord provided her with invoices for the repair; and
- she has not paid for the damage.

In regard to the garage door, the Agent for the Landlord stated that:

- the One Month Notice to End Tenancy for Cause was served to the Tenant because she damaged the garage door and has not paid for the cost of repairing it;
- the owner told her that the timer feature on the door was not activated;
- the owner told her that if the timer feature had been activated, an audio and visual alarm would sound before the door closed;
- the Tenant was not told about the timer feature because it was not activated;
- the Tenant initially offered to pay for the repair to the door;
- the Tenant subsequently rescinded the offer to pay for the repair of the door;
- the Tenant told her that she would pay for the door if she was found liable for the damage;
- the Tenant was provided with invoices for the repair;
- the Tenant has not paid for the damage;
- she spoke with someone at the Residential Tenancy Branch and was never told that she could apply for a monetary Order to recover the cost of repairing the door; and
- the person she spoke with at the Residential Tenancy Branch told her that she could serve a One Month Notice to End Tenancy for Cause.

The Tenant submitted a report from a garage door technician dated March 30, 2022. In the report the technician declares “motor has TTC set at 10 mins”. The Tenant stated that she understands this means that the door was automatically close after ten minutes, which is the information provided to her by the technician.

When the Agent for the Landlord was asked if she had any evidence to establish that the automatic timer was not activated, she referred me to an email, dated September 12, 2022, from a garage door technician. When the Agent for the Landlord was advised that this email does not make any reference to an automatic time, she stated that the timer is not mentioned in any of the documents she received from the garage door technician who repaired the door.

The Tenant referred to an email from the owner, dated December 31, 2021, in which the owner wrote, in part, “The door will only close automatically if a timer is set and then it will sound an alarm and blink the lights for a period of time before it starts to close”. The Tenant interprets this email to show that the Landlord knew the door was set on a timer. The Agent for the Landlord interprets this email to mean that the timer was not set, as the owner declares what will occur IF the time is set.

The Tenant submitted a video recording of her sitting in her vehicle. She stated that this video recording was taken after she set the automatic time to close after 1 minute. She stated that after 1 minute the door began to automatically close and that there is no visual or audio warning.

The Agent for the Landlord’s only response to this video is that she does not know what it is showing.

The Landlord and the Agent for the Landlord agree that the Tenant was unable to claim compensation for the damage through either insurance plans.

### Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant have a tenancy agreement which requires rent to be paid by the first day of each month.

Section 47(1) of the *Residential Tenancy Act (Act)* permits a landlord to end a tenancy by giving notice to end the tenancy if:

- a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b) the tenant is repeatedly late paying rent;
- (c) there are an unreasonable number of occupants in a rental unit;
- (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,
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - (iii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
  - (i) has caused or is likely to cause damage to the landlord's property,
  - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
  - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;
- (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;
- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [*assignment and subletting*];
- (j) the tenant knowingly gives false information about the residential property to a

prospective tenant or purchaser viewing the residential property;

(k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

(l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:

(i) the date the tenant receives the order;

(ii) the date specified in the order for the tenant to comply with the order.

On the basis of the undisputed evidence, I find that the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause on September 23, 2022, which informed the Tenant of the Landlord's intent to end the tenancy pursuant to section 47(1)(f) of the *Act*. The onus is on the Landlord to establish grounds to end the tenancy.

Section 32(3) of the *Act* requires a tenant to repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. In order to end the tenancy pursuant to section 47(1)(f) of the *Act*, I find that the Landlord must first establish that the Landlord is obligated to repair damage caused to a rental unit, pursuant to section 32(3) of the *Act*.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant is obligated to repair the damage to the garage door. While I accept that the door was damaged while the Tenant was backing her car out of the garage, I find it entirely possible that the damage occurred as a result of the door automatically closing at the same time as the Tenant was exiting the garage.

I favor the Tenant's submission that the automatic closing feature was activated on the garage door over the Landlord's submission that it this feature was not activated. In reaching this conclusion I was heavily influenced by the report from a garage door technician dated March 30, 2022 in which the technician declares "motor has TTC set at 10 mins". In reaching this conclusion I was further influenced by the Agent for the Landlord's inability to refer me to any evidence from a qualified technician that establishes the automatic closure feature was not activated. I find that the report of March 30, 2022 strongly supports the submission of the Tenant.

I have considered email from the owner, dated December 31, 2021, in which the owner wrote, in part, "The door will only close automatically if a timer is set and then it will sound an alarm and blink the lights for a period of time before it starts to close". I note that the owner does not, in the email, specifically declare that the automatic closure

feature was not activated. Although it is possible that the owner intended to convey that it was not working in the email of December 31, 2021, it is equally possible that the Landlord was declaring that the Tenant should have known that the door was closing because of the alarm and blinking lights. I therefor find that this email has little evidentiary value.

On the basis of the video submitted in evidence by the Tenant, I find that the warning signals the Landlord refers to in the email of December 31, 2021 were not functioning properly. The Tenant stated that the video demonstrates the door automatically closing pursuant to timer function, without any warning signals being activated.

On the basis of this video and in the absence of any evidence to the contrary, I find it entirely possible that the warning signals referred to by the Landlord in the email of December 31, 2021 were not functioning properly. I therefore find it highly likely that the Tenant backed into the garage door because she did not receive proper warning that the garage door was automatically closing.

As it highly likely that the Tenant backed into the garage door because she did not receive proper warning that the garage door was automatically closing, I find that the Tenant is not obligated to repair the resulting damage.

As the Landlord has failed to establish that the Tenant is obligated to repair the garage door, I find that the Landlord does not have the right to end this tenancy pursuant to section 47(1)(f) of the *Act*. I therefore grant the application to cancel the One Month Notice to End Tenancy for Cause.

I find that the Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee for filing the Application for Dispute Resolution. At the request of the Tenant, the Tenant is granted authority to reduce one monthly rent payment by \$100.00 in compensation for this cost.

### Conclusion

The One Month Notice to End Tenancy for Cause is dismissed. This tenancy shall continue until it is ended in accordance with the *Act*.

I authorize the Tenant to reduce one monthly rent payment by \$100.00 in compensation for the fee for filing the Application for Dispute Resolution.

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: February 10, 2023

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Residential Tenancy Branch