



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      **CNC**

### Introduction

This hearing by teleconference dealt with the Tenant's application for dispute resolution ("Application") pursuant to the *Residential Tenancy Act* (the "Act") in which the Tenant seeks cancellation a One Month Notice for Cause dated October 25, 2022 ("1 Month Notice") pursuant to section 47 of the Act.

The Landlord 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.

The Tenant stated he served the Notice of Dispute Resolution Proceeding ("NDRP") on the Landlord by email on November 20, 2022. Although there is no evidence that the parties agreed that documents could be served on each other by email, BS acknowledged the Landlord received the NDRP. As such, I find the NDRP was sufficiently served on the Landlord pursuant to section 71(2)(b) of the Act.

The Tenant stated he served his evidence on the Landlord by email on November 21, 2022. BS acknowledged the Landlord received the Tenant's evidence. As such, I find Tenant's evidence was sufficiently served on the Landlord pursuant to section 71(2)(b) of the Act.

BS stated the Landlord served its evidence on the Tenant by registered mail on March 6, 2023. BS provided the Canada Post tracking number for service of the Landlord's evidence to corroborate her testimony. The Tenant acknowledged he received the Landlord's evidence. I find the Landlord's evidence was served on the Tenant in accordance with the provisions of section 88 of the Act.

### Preliminary Matter – Removal of an Applicant from Application

At the outset of the hearing, I noted that the second applicant on the Application was not listed on the tenancy agreement and I asked the Tenant who that person was. The Tenant stated the other applicant his 12 year old son ("MA"). I noted that it was unnecessary to name MS as an applicant as he is not listed on the tenancy agreement as a tenant. The Tenant then requested that I remove MA as the second applicant on the Application. BS consented to the proposed amendment.

Residential Tenancy Branch Rule of Procedure 4.2 states:

#### **4.2 Amending an application at the hearing**

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. 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.

At the request of the Tenant, and with the consent of BS, I order the Application to be amended to remove MA as an applicant in the Application.

### Issues to be Decided

- Is the Tenant entitled to cancellation of the 1 Month Notice?
- If the Tenant is not entitled to cancellation of the 1 Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

### Background and Evidence

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

The Landlord submitted into evidence a copy of a signed tenancy agreement and addenda (collectively "Tenancy Agreement"), dated March 25, 2010. The Tenancy

Agreement states the tenancy commenced on April 1, 2019, with a fixed term ending March 31, 2020, with rent of \$1,950.00 payable on the 1<sup>st</sup> day of each month. BS acknowledged the Landlord received \$975.00 as a security deposit and that the Landlord was holding it in trust for the Tenant. Based on the foregoing, I find there is a residential tenancy between the parties and that I have jurisdiction to hear the Application.

The Tenant submitted into evidence a copy of the 1 Month BS submitted into evidence a copy of a signed Proof of Service on Form RTB-34 certifying the 1 Month Notice ("Old 1 Month Notice") was originally served on the Tenant's door on October 25, 2022. The Tenant acknowledged receiving the Old 1 Month Notice served on October 25, 2022. The parties stated they agreed to cancel the Old 1 Month Notice while they attempted to negotiate a settlement. BS stated that, as a settlement was not reached between the parties, the Landlord re-served the Tenant with the 1 Month Notice ("New 1 Month Notice"), bearing the same date and for the same causes, on the Tenant's door on November 4, 2022.

The Old and New 1 Month Notices stated the causes for ending the tenancy were:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The details of the causes provided in the Old and New 1 Month Notice were:

The tenant is repeatedly threatening and intimidating other tenants in the building.  
The tenant received the final warning for disturbing and intimidation in June 2021.

BS stated the Tenant had caused two disturbances, one on June and August 2021. BS submitted into evidence a notice from the Landlord to the Tenant, dated June 17, 2021, regarding the first incident that stated:

There have been several complaints regarding your disturbing and threatening behavior towards other Residents in the building. Please be aware that the residents of this building have a right to the quiet enjoyment of their suite; disturbances and general disregard for your neighbors is a direct violation of your Tenancy Agreement *and will not be tolerated.*

We consider the above to be a “material term” of your *Tenancy Agreement Addendum.*

You are hereby put on notice that if you continue to disturb the quiet enjoyment of others, you will be given a one month’s *Notice of Termination* to vacate the premises. Also, if we consider that someone’s health and safety is directly threatened by your actions, we will use the 48-hour emergency eviction procedure. Please consider this as a **final warning.**

Thank you for your immediate attention.

BS submitted into evidence a notice from the Landlord to the Tenant, dated August 17, 2021, regarding the second incident that stated:

We received another complaint in regards to your disturbing behavior towards other Residents in the building. Several witnesses confirmed that you were intrusive during a private gathering on the Railtown’s rooftop patio on August 15, 2021.

We already issued a final warning on June 17, 2021 because of your inappropriate behavior and because of the fact that you constantly violate the other’s right of quiet enjoyment of the building, therefore we are informing you that a notice of eviction will be issued, should we receive another complaint about you.

You will also be given the opportunity to provide a one month notice to vacate, should you not want to have the word “eviction” in your rental history.

When I asked why the Landlord did not served a Notice to End Tenancy for Cause following the issues of the warnings letters dated June 17 and August 17, 2021, BS

stated the Landlord was not relying on those events to support the causes to end the tenancy that were stated in the Old and New 1 Month Notices.

BS stated the Landlord's building manager received an email ("Email"), dated June 16, 2022, in which another resident ("Other Resident") living on the same floor as the Tenant reported the following incident:

Today at 7:45 pm our neighbor [first name of Tenant] threatened to kill my dog and told me "it was over for me." He said if my dog comes near his son "he would kill him." He is my neighbor so I have to pass his apartment to get to mine. This isn't the first time he has made me and my family feel unsafe in the building. There have been multiple occasions where he has threatened me and my wife's personal space. I want to make a formal complaint as I don't feel safe and if anything should happen I want it on record. As a minority in the building and the current climate I feel targeted and unsafe for me and my family.

BS stated the office of the Landlord did not receive any complaints about the Tenant between August 17, 2021 until the Landlord's office received the Email from the building manager in November 2022. BS stated that, after the Landlord's office received the Email, it gave the Tenant the Old 1 Month Notice. BS stated the building manager told her there were several other complaints from residents of the building, but he did not send them to BS. BS stated there was no evidence to confirm the information provided by the Other Resident in the Email. BS stated she met with the parties and it was really a "he said she said situation".

BS stated the Tenant's conduct was also a material breach of 19 of the Tenancy Agreement that states:

CONDUCT. In order to promote the convenience, safety, welfare and comfort of other tenants in the Property, the Tenants and guest shall not disturb, harass, or annoy occupants of the Property or neighbours, and shall not cause loud conversation, music, television, or other irritating noise to disturb peaceful enjoyment at any time, and shall maintain quiet between 11 p.m. and 8:00 a.m. Any Tenant who causes other occupants to vacate the premises because of noise, or other disturbance, harassment, or annoyance, shall indemnify the Landlord for all costs and losses caused thereby, and may have the tenancy terminated

pursuant to this agreement. The Tenant will be responsible for all breaches of this agreement by any of the Tenant's guests, invitees or visitors.

The Tenant submitted into evidence a written submission providing his version of events relating to the two warning letters given by the Landlord to the Tenant on June 17 and August 17, 2021. The Tenant also provided a very different version of the incident that occurred with the Other Resident on June 16, 2022. I have not provided the details provided by the Tenant of they are unnecessary for making my decision.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the onus is the Landlord to establish on a balance of probabilities that it is entitled to an order for an early end of the tenancy.

Subsections 47(1)(d)(i), 47(1)(d)(i) and 47(1)(h) 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 of the residential property,
    - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,, or
    - [...]
  - (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;
    - [...]
- (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 Old 1 Month Notice was served on the Tenant's door on October 25, 2022. Pursuant to section 90 of the Act, the Tenant was deemed to have received the Old 1 Month on October 28, 2022. Pursuant to section 47(4) of the Act, the Tenant had until November 8, 2022, being the expiry of the 10-day dispute period, to make an application for dispute resolution to dispute the Old 1 Month Notice. The records of the RTB disclose the Tenant's Application was made on November 4, 2022. As such, , I find the Tenant's Application to dispute the Old 1 Month Notice was made within the 10-day dispute period required by section 47(4) of the Act. I find that, when the Tenant disputed the Old 1 Month Notice, he was presumed to have also disputed the New 1 Month Notice that had the same date and same causes as the Old 1 Month Notice. As such, I find it was unnecessary for the Tenant to make a new application for dispute resolution to dispute the New 1 Month Notice.

BS stated there were two disturbances involving the Tenant that led to the Landlord giving the Tenant warning letters June 17, 2021 and August 17, 2021. BS admitted the Landlord did not serve a One Month Notice to End Tenancy for Cause related to those incidents and the Landlord was not relying on those incidents to support the causes for ending the tenancy pursuant to the Old and New 1 Month Notices. As such, I will not consider those events for the purposes of determining whether there is cause to end the tenancy pursuant to the Old and New 1 Month Notices.

BS stated the Landlord's office did not receive a copy of the Email until November at which time the Landlord issued the Old 1 Month Notice. BS stated the building manager told her there were several other complaints from residents of the residential property but he did not send them to BS. BS stated there was no evidence to confirm the information stated in the Email by the Other Resident or information provided by the Tenant. BS stated she met with the parties and that it was really a "he said she said situation". BS stated the Tenant's conduct was also a material breach of 19 of the Tenancy Agreement. The Landlord did not call the Other Resident or any other witnesses to support the Landlord's claims that there was cause to end the tenancy pursuant to the Old and New 1 Month Notices. The Tenant provided a very different version of the incident that occurred with the Other Resident on June 16, 2022.

I note that subsection 47(1)(d)(i) of the Act uses the word "significantly" and section 47(1)(d)(ii) of the Act uses the adjective "seriously" as part of the cause stated in those subsections. This means a landlord must prove the activity, behavior or misconduct of the tenant must be sufficient to warrant an eviction of the Tenant pursuant to either subsections 47(1)(d)(i) or 47(1)(f) of the Act.

The description of the incident described by the Other Resident in the Email is very different from the description of the incident provided by the Tenant. BS did not call any witnesses to corroborate the version of events provided in the Email by the Other Resident. As such, I was unable to obtain further particulars on the incident from the Other Resident nor am I able to determine the credibility of the Other Resident. BS admitted it was a "he said she said situation". As such, I find the Landlord has not proven, on a balance of probabilities, that the Tenant has breached any of subsections 41(1)(d)(i) or 41(1)(d)(i). Furthermore, the Landlord has not provided any evidence that a written notice was given to the Tenant to remedy a material breach of the tenancy agreement in respect of the Email. As such, the provisions of section 47(1)(f) were not triggered before the Old and New 1 Month Notices were given to the Tenant. As such, I find the Landlord has not proven, on a balance of probabilities, that the Tenant has breached section 41(1)(f) of the Act. Based on the foregoing, 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 Landlord when this deduction is made. The Landlord



may not serve the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenant.

Conclusion

The 1 Month Notice is cancelled. 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 for the Application.

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: March 24, 2023

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Residential Tenancy Branch