



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding THE ELIZABETH FRY SOCIETY OF GREATER  
VANCOUVER and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC | CNR

### Introduction

This hearing dealt with the Tenant's applications under the Residential Tenancy Act (the "Act") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated January 4, 2023 (the "One Month Notice") pursuant to section 47; and
- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 13, 2023 (the "10 Day Notice") pursuant to section 46.

The Landlord's agent VL and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

### Preliminary Matter – Service of Dispute Resolution Documents

VL acknowledged receipt of the Tenant's notices of dispute resolution proceeding packages and documentary evidence (collectively, the "Tenant's Dispute Resolution Documents"). I find the Landlord was served with the Tenant's Dispute Resolution Documents in accordance with sections 88 and 89 of the Act.

The Tenant acknowledged receipt of the Landlord's documentary evidence. I find the Tenant was served with the Landlord's documentary evidence in accordance with section 88 of the Act.

### Preliminary Matter – Landlord's Name

VL confirmed the Landlord's full name during the hearing. Pursuant to section 64(3)(c) of the Act, I have amended the Tenant's applications to update the Landlord's full name.

#### Preliminary Matter – 10 Day Notice Resolved

VL confirmed the Tenant is currently up to date with payment of rent and the Landlord agrees to let the 10 Day Notice go. Accordingly, I order that the 10 Day Notice is set aside.

#### Issue to be Decided

Is the Tenant entitled to cancel the One Month Notice?

#### Background and Evidence

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

This tenancy commenced on December 15, 2022 and is month-to-month. The portion of rent paid by the Tenant is \$570.00 due on the first day of each month. The Landlord receives a subsidy in addition to the amount paid by the Tenant. The Tenant paid a security deposit of \$285.00. A copy of the tenancy agreement has been submitted into evidence.

Copies of the One Month Notice have also been submitted into evidence. The One Month Notice is signed by VL on behalf of the Landlord and has an effective date of February 3, 2023. The reasons for this notice are:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
- 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 property

- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord

The One Month Notice contains the following details of cause (portions redacted for privacy):

On January 2, 2023 around 01:30am, [the Tenant] sought assistance from an EFry Shelter Staff (on the 2nd floor of [rental property] building), claiming that a lady fell down in her unit and paramedics services would need to be called for. Two EFry Shelter Staff attended her unit and found that the lady claimed to have fallen down was a EFry Shelter Client from the second floor. The staff also reported a male in the unit and all people in the unit were seen to be under the influence of narcotics with paraphernalia present. At about 02:30am, the Security Alarm company called and reported that someone was going down Stairway A from the fourth floor. EFry Shelter Staff checked and did not see anyone. A few moments later, [the Tenant] came out with no shoes on and asked our staff whether they saw a male running away. [The Tenant] and the male repeatedly called the Shelter Staff on the second floor to ask their friend (the Shelter Client) to meet them downstairs, despite our staff telling them to stop doing so. EFry Shelter Staff made it clear to [the Tenant] that staff could neither confirm nor deny that the Shelter Client was there, since any information about our shelter residents had to be kept confidential.

In addition, other residents have reported that there are many strangers visiting and causing disturbances at all hours of the day and night. [The Tenant] has claimed to have lost her keys and fob multiple times, which, we believe, she has provided to non-residents for gaining access to the [rental property] building. This has put other residents at risk. [The Tenant] has been constantly calling the EFry Shelter Staff on the intercom to buzz her into the building because she does not have a fob.

Lastly, [the Tenant] and her visitors have engaged in illegal activity in the building. The quiet enjoyment, safety, well-being of other tenants and residents in the property has been adversely affected.

The Tenant acknowledged receipt of a copy of the One Month Notice attached to her door on January 4, 2023.

VL testified that there has been an ongoing issue with the Tenant allowing visitors into the building, including those that are selling drugs and abusing or threatening shelter staff. VL testified that the Tenant and her visitors have engaged in illegal activities and have continued to infringe on the quiet enjoyment of the Tenant's neighbours. VL stated that there have been critical incidents where the police were called in. VL stated that the next-door neighbours had reported the Tenant taking narcotics on their property. VL stated that the Tenant's visitors continuously tried to buzz into the building and harassed shelter staff.

VL referred to an email from the Tenant dated January 4, 2023, in which the Tenant stated as follows (portions redacted for privacy):

Please give me one more chance I didn't mean to do anything wrong I trusted someone that I shouldn't have I did not know that girl used drugs I do not use drugs myself and I was oblivious to the fact that she is drugs I am really sorry I do not want to be homeless with me and my [child] please, give me another chance I cannot be homeless I will end up losing my baby please don't do this to me please give me one more chance and I promise you nothing more will go wrong. I will have no more guests in the house except family and my [child].

VL testified that the Tenant's promises did not stand. VL testified that the behaviours worsened to the point that the Landlord was required to hire an overnight security guard to patrol the Tenant's floor.

VL testified that the Tenant was repeatedly reported as interrupting the quiet enjoyment of other residents and allowing visitors into the property to engage in illegal activities. VL testified that the Tenant confronted and yelled at staff, and quarreled with a visitor almost to the point of violence.

The evidence submitted by the Landlord indicates that the Landlord issued another one month notice to end tenancy for cause in March 2023. It is unclear whether the Tenant was served with this notice. The parties do not appear to have had submitted applications for dispute resolution with respect to this notice.

VL stated that the most concerning issue is ongoing threats against another resident and the resident's daughter. VL stated that the Tenant has used bear spray on others. VL testified that two individuals are in the process of applying for protection orders in provincial court. VL testified that the Landlord has filed an application for an order to end

the tenancy early, which will be heard on May 16, 2023 (file number referenced on the cover page of this decision).

The Tenant argued that the Landlord only provided hearsay information. The Tenant suggested that based on her phone records, she was not there at the time or place indicated by the Landlord. The Tenant indicated that she was struggling with mental health issues. The Tenant stated that she called the police due to a male who threatened her with a weapon. The Tenant argued that the Landlord was not acknowledging what was done to the Tenant by others.

### Analysis

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 52 of the Act states that in order to be effective, a notice to end tenancy given by a landlord must:

- be in writing
- be signed and dated by the landlord giving the notice
- give the address of the rental unit
- state the effective date of the notice
- state the grounds for ending the tenancy, and
- be in the approved (Residential Tenancy Branch) form.

Section 47(2) further requires that the effective date of a landlord's notice under section 47 must be:

- (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.

I have reviewed the One Month Notice and find that it complies with the requirements of sections 52 of the Act. I find the effective date of the One Month Notice does not comply with section 47(2) of the Act. Pursuant to section 53 of the Act, I find the corrected effective date of the One Month Notice is deemed to be February 28, 2023.

I find the Tenant was served with the One Month Notice on January 3, 2023 in accordance with section 88(g) of the Act. Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days of receiving such

notice. Records indicate that the Tenant submitted this application on January 11, 2023. I find the Tenant made this application within the time limit prescribed under section 47(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

The reasons provided in the One Month Notice correspond to sections 47(1)(d)(i), (d)(iii), (e)(ii) and (e)(iii) of the Act, which state as follows:

**Landlord's notice: cause**

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,

[...]

(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

[...]

(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;

Based on the evidence presented, I accept that there was a disturbance in the early hours of January 2, 2023 involving the Tenant, a shelter client of the Landlord's, and a visitor. However, I find the Landlord has provided little evidence or details regarding this incident. I find that aside from the One Month Notice itself, the Landlord has not submitted any documentary or digital evidence such as a staff incident report, witness statements, email correspondence, photo/video evidence, or a warning letter to the Tenant regarding this incident. I find the Landlord has not provided details to explain what drugs were alleged to have been used, whether they were illicit drugs, and what paraphernalia was observed. I note the Tenant denied that she was using drugs in her

email dated January 4, 2023. I find the description of the January 2, 2023 incident in the One Month Notice does not appear to suggest any violence or threat of violence. As such, I am unable to conclude that this incident alone amounts to “significant” interference and “unreasonable” disturbance sufficiently serious to warrant termination of the tenancy.

In addition, I find the Landlord has not provided sufficient evidence to explain the incidents of “strangers visiting and causing disturbances at all hours of the day and night” as stated in the One Month Notice. I find the Landlord has not provided the dates and times of the alleged disturbances and has not submitted evidence such as complaints received from other residents at that time, or evidence to show that the strangers referred to were individuals permitted onto the property by the Tenant.

I find the Landlord has not clearly explained how the Tenant or a person permitted on the property by the Tenant has put the Landlord’s property at significant risk as indicated on the One Month Notice. I find there is insufficient evidence of damage or risk of damage.

Moreover, I find the Landlord has not provided sufficient evidence to demonstrate that the Tenant or a visitor of the Tenant had engaged in illegal activity on the property as suggested in the One Month Notice.

I note that under section 75 of the Act, the director may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be (a) necessary and appropriate, and (b) relevant to the dispute resolution proceeding. This means that hearsay evidence can be admitted where it is necessary, appropriate, and relevant.

I find nearly all of the evidence submitted by the Landlord speaks to incidents that took place after the One Month Notice was issued. I accept that further and more serious incidents involving the Tenant may have occurred since the One Month Notice was issued. However, those incidents cannot be the cause upon which the One Month Notice was based. Those incidents may properly be the subject matter of a subsequent notice to end tenancy issued by the Landlord or the Landlord’s application for an early end to the tenancy.

Based on the foregoing, I conclude that the Landlord has not provided sufficient evidence to establish cause for ending the tenancy as stated in the One Month Notice. Accordingly, I order that the One Month Notice be set aside.

Conclusion

The Tenant's applications to dispute the One Month Notice and the 10 Day Notice are granted. The One Month Notice and the 10 Day Notice are cancelled and of no force or effect. This tenancy shall 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 *Residential Tenancy Act*.

Dated: May 11, 2023

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Residential Tenancy Branch