



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

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Aragon Development Corp

and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      Tenants: CNC, OLC, FFT  
Landlords: OPC, MNDL, OL, FFL

### Introduction

This hearing was convened as a result of the parties' applications made under the *Residential Tenancy Act* (the "Act").

The Tenants applied for:

- cancellation of a one month notice to end tenancy for cause dated January 20, 2023 (the "One Month Notice") pursuant to section 47 of the Act;
- an order that the Landlord comply with the Act, the regulations, or tenancy agreement pursuant to section 62 of the Act; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72 of the Act.

The Landlord applied for:

- an Order of Possession under the One Month Notice pursuant to sections 47 and 55 of the Act;
- compensation of \$83,506.11 to repair the damage that the Tenants, their pets or their guests caused during the tenancy pursuant to sections 32 and 67 of the Act;
- another issue not listed; and
- authorization to recover the filing fee for this application from the Tenants pursuant to section 72 of the Act.

The Landlord's resident caretaker PJ and the Tenants attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The Landlord was represented by legal counsel PO. The Tenants were represented by advocates JA and DJ.

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

### Preliminary Matter – Service of Dispute Resolution Materials

PO confirmed receipt of the Tenants' notice of dispute resolution proceeding package and evidence on behalf of the Landlord.

The Tenants' advocates confirmed receipt of the Landlord's notice of dispute resolution proceeding package in February 2023. The Tenants' advocates argued that the Landlord did not serve its evidence at the same time as the Landlord's cross-application was submitted, as required under Rule 3.3 of the Rules of Procedure. The Tenants' advocates indicated that they accepted the Landlord's evidence in March 2023 for the purpose of a prior proceeding in that month, which is unrelated to the parties' applications in this proceeding. The Tenants' advocates argued that the Landlord was required to provide two separate evidence packages.

PO confirmed that the Landlord's evidence for this proceeding was served in March 2023. The Landlord had sought to join its application to the previous hearing. PO noted the Tenants had accepted service of the Landlord's evidence at that time without any objection.

According to Rule 3.15 of the Rules of Procedure, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. I find the Landlord's evidence was served on time pursuant to Rule 3.15. I find there is insufficient evidence that the Tenants were prejudiced by the Landlord serving all of its evidence together. I find the Landlord had identified all three dispute resolution file numbers when serving the evidence. As such, I will not exclude any of the Landlord's evidence for the purpose of responding to the Tenants' claim to dispute the One Month Notice. As I will explain further below, claims in both applications which are not related to the issue of cancelling or upholding One Month Notice will be severed and not considered in this decision.

Based on the foregoing, I find the parties were served with each other's proceeding packages and evidence in accordance with sections 88 and 89 of the Act.

### Preliminary Matter – Severing Unrelated Claims

Rules 2.3 and 6.2 of the Rules of Procedure state as follows:

#### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

## **6.2 What will be considered at a dispute resolution hearing**

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

(emphasis underlined)

The Tenants have applied to cancel a notice to end tenancy and the Landlord is seeking an order of possession. Both parties have included other claims in their applications. Aside from the claims to recover the filing fee, I find the other claims in the parties' applications to be unrelated to the issue of whether the tenancy is ending under the One Month Notice. Pursuant to Rule 6.2 of the Rules of Procedure, I sever and dismiss those unrelated claims with leave to re-apply.

### Preliminary Matter – Tenants' Request for Original Evidence

The Tenants requested that the Landlord produce the original copy of a Form K said to be signed by the Tenants. The Tenants dispute the authenticity of this document.

According to Rule 3.8 of the Rules of Procedure, the parties must be prepared to supply an original of any document if requested to do so by the arbitrator. Having considered the evidence and testimonies of the parties, I do not find the original Form K to be necessary for the purpose of adjudicating this dispute. The parties made arguments about the Form K, the strata bylaws, and the tenancy agreement. However, I do not find the One Month Notice to allege that the Tenants have failed to comply with a material term under section 47(1)(h) of the Act. Therefore, I do not find anything to turn on this issue and I do not request the Landlord to produce the original Form K.

### Issues to be Decided

1. Should the One Month Notice be cancelled?
2. Are the parties entitled to reimbursement of their filing fees?

### Background and Evidence

While I have turned my mind to all the 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 the parties' applications and my findings are set out below.

This tenancy commenced on August 1, 2014 and is month-to-month. According to the Tenants, they did not sign any written tenancy agreement with the Landlord. Rent is currently \$1,979.00 due on the first day of each month. The Tenants paid a security deposit of \$837.50.

One of the Tenants, LR, has resided in the building in different units since October 1, 2004. In 2019, LR was involved in proceedings to evict CA, an ex-partner who had taken over a unit formerly occupied by LR. Prior decisions of the Residential Tenancy Branch determined that LR was no longer the tenant of that unit. In September 2021, the Residential Tenancy Branch awarded LR compensation for loss of quiet enjoyment from the Landlord. CA was evicted for cause in April 2022 over a separate incident (see file numbers ending in [983] and [420], referenced on the cover page of this decision).

Previously, the Landlord had issued two notices to end tenancy for cause to the Tenants, dated July 27, 2021 (the "First Notice") and January 7, 2022. The First Notice was cancelled as part of a settlement agreed to by the parties during a hearing on December 9, 2021 (the "Settlement"). The second notice stemmed from an alleged breach of the Settlement by the Tenants. The second notice was set aside by an arbitrator in March 2022. (File numbers for these two proceedings are referenced on the cover page of this decision, ending in [371] and [329] respectively.)

Most recently, the parties attended a dispute resolution hearing on March 28, 2023 regarding the Tenants' application for compensation and other relief (file number ending in [331]), which was dismissed with leave to re-apply.

Copies of the current One Month Notice are submitted into evidence. This notice is signed by senior property manager SP on behalf of the Landlord and had an effective date of February 28, 2023. The reasons for ending the tenancy are:

- Tenant has allowed an unreasonable number of occupants in the unit
- 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 seriously jeopardized the health or safety or lawful right of 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 adversely jeopardize a lawful right or interest of another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit or property

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

1. The tenant's guest [CA], an evicted tenant of the building (Decision [983] cross [420]), has breached the act when he stole another tenant's possession from the common property in September 2022.
2. The tenants have breached the terms of their settlement agreement (December 9, 2021 Decision [371]) with their behaviour and continuing to smoke within [the rental unit] as of January 2023. The matter regarding odour caused by the tenants in [the rental unit] affecting other tenants and units in the building, has never been heard before an arbitrator.
3. The tenants were issued a breach letter in October 2022 explaining that under provision 9(2.1) of the Schedule of the Residential Tenancy Regulation, their guest CA had breached the act when they permitted him onto the property and he stole property belonging to another tenant from the common property, and by doing so was henceforth restricted from common areas of the building.
4. CA appears to be living in [the rental unit] as of January 2023. His history with the building poses a threat to the residents and the landlords property.

The Tenants acknowledge receipt of the One Month Notice attached to their door on January 20, 2023.

*Issues Relating to CA*

The Landlord submits that on September 1, 2022, CA was permitted onto the property as a guest of the Tenants. During this time, CA stole another tenant's property from the lobby. The Landlord provided video evidence in support. The police were called and CA was arrested outside the rental unit, where he had been staying after having been evicted on April 30, 2022 from another unit in the building. According to the Landlord, concerned residents and tradespeople reported to building management that CA was regularly seen returning to the building after his eviction and going to the rental unit.

The Landlord submits that after CA's arrest, CA was given a "no go" order by the police and prohibited from entering the building. The Landlord's property manager issued a letter to the Tenants dated October 18, 2022. Following CA's arrest, LR posted notices in the common areas of the building about the stolen property that CA had taken to the rental unit, showing that LR was in possession of it. LR ignored building management's request to not post notices in the common areas. The Tenants claimed that CA was being framed for theft and that the stolen item was from a "freezone". LR held onto the stolen property and refused to return it to property management or the police. On September 14, 2022, two weeks after the theft, the property was finally recovered from LR at the rental unit by police, causing considerable inconvenience to the tenant who had to collect their possessions at a later date from the police's seized or recovered property return office.

According to the Landlord, the Tenants have claimed that because the stolen property was returned after CA's arrest, it is not a theft, and appear to believe holding onto the property instead of returning it to its rightful owner is acceptable. Furthermore, the Tenants have also claimed that the matter never went before a judge, implying that CA must be innocent. The Landlord referred to the arbitrator's decision dated March 30, 2022 from CA's eviction proceeding, which states: "I note that the burden of proof required for criminal proceedings is substantially higher than the balance of probabilities required under the Act, which may be why criminal charges have not been laid."

The Landlord submits that CA was evicted from the building due to his guest J.B.'s involvement in facilitating a theft of mail from within the same area by the mailboxes in the lobby. In granting the Landlord an Order of Possession for CA's former unit, the arbitrator wrote as follows:

I find that in either stealing packages or aiding and abetting the theft of packages from the rental building, which is part of the tenant's residential property, J.B.

seriously jeopardized the lawful right or interest of other occupants of the subject rental building, contrary to section 41(d)(ii) of the Act. I find that the other occupants of the subject rental building have a right to not have their packages stolen by guests of the tenant or associates of the tenant's guests. I find that theft constitutes a serious infringement of the rights of the occupants of the subject rental building.

The Landlord submits that video evidence and stills show CA clearly taking another tenant's possession, while as a guest of the Tenants. The Landlord argues that given CA's history of theft and eviction from the building, it is clear that CA knew better than to take something that was not theirs.

The Landlord submits that CA continues to reside with the Tenants. The Landlord provided evidence of CA going in and out of the property from December 2022 to March 2023.

The Landlord argues that CA, a person permitted on the property by the Tenants, has significantly interfered with or unreasonably disturbed another occupant or the Landlord, and has seriously jeopardized the health, safety, or lawful right or interest of the Landlord or another occupant.

In response, the Tenants argue that the Landlord has impeded their ability to have guests as a form of retaliation. In September 2021, the Landlord had been ordered by the Residential Tenancy Branch to pay LR \$11,780.81 for loss of quiet enjoyment. The Tenants submit that the Landlord subsequently went full force to harass the Tenants with any little infraction that was previously accepted for many years.

The Tenants do not dispute that CA was their guest. However, the Tenants submit that CA did not steal. The Tenants submit that CA retrieved an item from a "free zone" area near a community bookshelf with a recycling bin, where residents either leave or pick up donated items daily. The Tenants submit it is common knowledge for the building that this area is classified as a free or donation zone. Only recently did the Landlord put up notices for residents to stop leaving free items.

The Tenants argue that the Landlord has wrongfully labeled CA's actions as theft and filed false charges against CA. The Tenants submit that the Landlord grossly exaggerated the incident by making false allegations and threatening to evict the Tenants if CA returns. The Tenants submit that the incident took place a few days before CA's own hearing against the Landlord for loss of quiet enjoyment (see file

number ending in [331]). The Tenants submit they had made every effort to return the item by contacting the police, who finally picked it up on September 14, 2022. The Tenants provided email correspondence in which LR explained to the property manager that she was waiting for instructions from police given it had become a criminal matter.

The Tenants disagree with the guest restrictions imposed by the Landlord's letter dated October 18, 2022. According to the Tenants, CA attended court in October 2022 and learned that the charges were dropped. The Tenants communicated with the police regarding CA's "no go" to the property, and were advised on November 23, 2022 that CA had "no conditions" to the property. The Tenants invited CA to return as their guest after confirming that CA no longer had any conditions to contend with. The Tenants submit that CA housesat for the Tenants for about one week while they were on vacation. The Tenants submit that CA has not lived at the rental unit since January 2023.

### *Smoking and Odours*

The Landlord submits that from November 2018 to May 2021, the previous tenant of the unit above the rental unit, AG, complained of a cigarette smell odour which later changed to a chemical odour smell which AG believed to be ingress from the rental unit. Building-wide notices, unit-specific notices, and a personalized warning letter to the Tenants were issued. According to the Landlord, the Tenants advised they had stopped smoking in the unit after receiving the letters.

The Landlord submits that AG continued to have an odour issue, which was now a new chemical smell. In April 2020, AG gave legal notice to vacate due to the odour issue. Over the next several months, the unit was unrentable due to the odour, which was noticeably worse on the weekends, present in the hallway outside the rental unit, and in the courtyard of the building where the rental unit windows open to.

The Landlord submits that in November 2020, the Tenants stated that they could not smell any strong odours or chemical smells in their unit. The Landlord retained an environmental engineer to investigate. According to the Landlord, the environmental engineer discovered volatile organic compounds ("VOCs") were so high in the vacant unit above the rental unit (800-900 ppb) that synthetic narcotics production was indicated. The police, fire personnel, and hazmat team were informed of the readings and attended the building in December 2020. Only trace VOCs were detected in the rental unit and unit above, and the odour appeared to be gone from the unit above.



The Tenants submit that on December 5, 2020, the hazmat, swat team, and fire department attended the building to investigate a serious building-wide issue and isolated their inspection to five units, including the rental unit and CA's unit at the time, all of which were directly above one another. According to the Tenants, SH was told by PJ at the manager's office on December 7, 2020 that the unit above the rental unit had high VOCs. According to the Tenants, no toxic or bad readings were found in the rental unit at the time.

The Landlord submits that in early 2021, the environmental engineer provided a report regarding the affected unit and noted the odour continued. From February to March 2021, building management and contractors followed recommendations from the report to seal up the unit, remove heaters and appliances, tape the bathroom shut, use an ozone machine, flush the unit with air, keep windows and balcony door open, and keep fans running. According to the Landlord, the odours persisted despite these efforts.

In March 2021, the environmental engineer conducted a site inspection and confirmed the rental unit to be the source of the odour with a 1,800-1,900 read on the meter. The environmental engineer also witnessed an oil diffuser actively dispersing eucalyptus essential oil. According to the environmental engineer, eucalyptus oil is one of a few essential oils used by people to mask smoking smells.

The Landlord submits that the Tenants have caused damage to the unit above the rental unit as a result of the Tenants smoking cannabis and cigarettes in the rental unit and using eucalyptus oil to mask the smell of smoke in the rental unit.

On June 12, 2021, the Tenants received a letter from the Landlord stating that the rental unit was found to be the "source of the odour issue affecting the surrounding suites."

On July 27, 2021, the Tenants were served with the First Notice to end tenancy, which alleged the Tenants were smoking in the rental unit and masking the smell of smoke with diffused oils. The reasons for ending the tenancy under this notice were:

- Tenant or a person permitted on the property by the tenant has significant interfered with or unreasonably disturbed another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit or property

The First Notice alleges that the unit above the rental unit was rendered uninhabitable as a result of the Tenants' use of essential oils. It references the findings of the environmental engineering report indicating that the source of the smell and VOC is the rental unit.

The First Notice was set aside at the hearing on December 9, 2021, as part of the Settlement agreed to by the parties upon the following terms (see decision [371]):

1. The One Month Notice to End Tenancy for Cause of July 27, 2021 is cancelled and of no force or effect.
2. The Tenants agreed to comply with all current bylaws, and any new bylaws that may be enacted.
3. The Tenants, and two agents of the Landlord (M.J. and P.J.), will attempt as best as possible to avoid any interaction.
4. Any necessary communication between the Landlord and the Tenants shall be through D.D., an agent for the Landlord.
5. M.J. and P.J. are still permitted to serve documents to the Tenants in any manner in accordance with the Act; however, they will attempt as best as possible to avoid personal service.
6. Both parties agreed to split the \$100.00 filing fee. The Tenants are permitted to withhold \$50.00 from the next month's rent in satisfaction of this debt.
7. The parties agreed that fulfilment of these conditions would amount to full and complete satisfaction of this dispute with respect to the Notice.
8. Both parties agreed that they will attempt to move forward in an amicable manner to ensure a successful tenancy.

The current One Month Notice alleges the Tenants breached the Settlement by continuing to smoke in the rental unit as of January 2023. The Landlord submits that a follow-up consultation with the environmental engineer in March 2022. According to the Landlord, the current tenant of the unit above the rental unit also continues to observe an odour. The Landlord provided handwritten odour logs from this tenant, which has entries from August to November 2022 and February to March 2023.

The Landlord also provided warning letters to the Tenants dated May 31, 2022 and September 28, 2022. According to the September 28, 2022 warning letter, the Landlord had received a detailed log from an Air Quality Monitor set up in the unit above the rental unit and a written complaint regarding ongoing marijuana smoke from the rental unit.

In response, the Tenants submit that one of them, SH, has asthma, and that as a result LR smokes outside. The Tenants argue that the Landlord has admitted smoking is a building-wide issue and that it is difficult to track who is smoking in the building. The Tenants argue they were being blamed for using scented oils that rendered the unit above uninhabitable, even though scents and odours were known to be a building-wide issue due to artists living in the building and the VOCs used in their work.

The Tenants submit that they sent multiple letters and emails to clarify that it was not them smoking in the building. The Tenants argue that:

- No one attended the rental unit when the alleged infractions were occurring.
- No one saw the Tenants or their guests smoking inside the rental unit.
- No one followed up with the Tenants or installed an apparatus in the rental unit to verify with certainty that the Tenants were the source and cause of the essential oil, tobacco, and marijuana odour in the building.

The Tenants submit that there have only been two in-suite inspections conducted since the tenancy began, once in March 2021 and a second time in June 2022.

The Tenants submit that during the inspection of the rental unit on March 16, 2021, the SH was asked a series of personal questions about whether they smoked inside or outside, used candles and incense etc. SH advised that the Tenants used a diffuser with 100% organic eucalyptus oil and occasionally used candles. The Tenants wrote a letter to the Landlord on March 17, 2021 expressing concern that the Tenants were not updated on the potential safety hazard in the building since December 2020. The Landlord responded with a letter dated March 17, 2021, declaring an immediate ban on scents and odours, and asked the Tenants to stop using candles, incense, and diffusers. The Tenants submit they have complied with this request ever since.

The Tenants submit that on June 24, 2022 there was a 5-6 minute inspection of the rental unit, and no VOC measuring device was installed to determine if the odours were emanating from the rental unit or elsewhere.

The Tenants submit that on October 6, 2022, a building-wide notice was posted in the elevator, and this was the last time issue of odours, scents, or smoking was raised by the Landlord until the Tenants received the One Month Notice on January 20, 2023.

## Analysis

### *1. Should the One Month Notice be cancelled?*

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 47 and 52 of the Act.

I find the Tenants were served with the One Month Notice on January 20, 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 Tenants submitted their application on January 25, 2023. I find the Tenants made this application within the required time limit.

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 for ending the tenancy correspond to cause described in sections 47(1)(c), (d), (e)(ii), (e)(iii), and (f) 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:

[...]

(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

[...]

(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;

For the reasons that follow, I find the Landlord has not provided sufficient evidence to establish cause for ending the tenancy as stated on the One Month Notice, pursuant to any of sections 47(1)(c), (d), (e)(ii), (e)(iii), and (f) of the Act. I will discuss the issues regarding CA first, followed by issues regarding smoking and odours.

*Issues Relating to CA*

I find it is undisputed that CA was the Tenants' guest on September 1, 2022, and was therefore a person permitted on the residential property by the Tenants.

However, I find there is insufficient evidence that CA had stolen the item from the community bookcase on September 1, 2022.

First, based on the photos provided by the Landlord, I find the item taken by CA was not a mail or parcel clearly addressed to someone else, was not wrapped, and while it appeared to be in very good condition, did not appear to be a brand new item.

Second, based on photos provided by the Landlord, I find this item was left on the ground next to the recycling bin underneath the community bookcase when CA had picked it up. I accept the Tenants' evidence that this area has been used by residents as a free or donation zone. I find the Tenants provided photos showing other items left in this area on other occasions, including a lamp next to the bookcase and a box with framed pictures underneath the bookcase. Furthermore, I find the Landlord's photo evidence shows that the owner of the item taken by CA had posted the following notice (portions redacted for privacy):

**MISSING [ITEM]**

Was stashed in lobby Thursday night – not intended to be up for grabs. Please return : )

[description of item]. Thank you!

I find this notice is also evidence that it would not have been unreasonable for CA to believe that the item he took was unwanted. I find the Landlord provided photos of the Tenants and CA walking past this notice, posted on September 2, 2022, but I find there is insufficient evidence to suggest that any of them had seen this notice prior to CA's arrest on September 4, 2022. Furthermore, I do not find the Tenants or CA to have unreasonably withheld the item after CA was charged. I find LR explained in an email to the Landlord's property manager dated September 6, 2022 that she was waiting for instructions from police and CA's lawyer on what to do about the item now that it was a criminal matter.

Third, I find CA had not been evicted from the building for theft, but for permitting someone into the building who either engaged in or aided another person to commit theft. I find there is insufficient evidence that CA himself had previously engaged in theft at the building. I accept the Tenants' evidence that CA's charges from the September 1, 2022 incident were dropped and CA's "no go" to the building was cancelled.

Under these circumstances, I am not satisfied that the September 1, 2022 incident amounts to cause for ending this tenancy under any of sections 47(1)(d), (e)(ii), (e)(iii), and (f) of the Act. I do not find the Landlord to have demonstrated that CA, while as the

Tenant's guest, engaged in illegal activity or significantly interfered with, unreasonably disturbed, or seriously jeopardized the rights of the other residents or the Landlord, or put the property at significant risk.

I find that apart from the September 1, 2022 incident, the One Month Notice does not allege CA to have engaged in other inappropriate behaviour while visiting the property as the Tenants' guest. I do not find the Landlord to have provided sufficient evidence to demonstrate that CA's mere presence at the property would have seriously jeopardized the health, safety, or lawful right or interest of the Landlord or other residents, or put the property at significant risk. I do not find the Landlord to have pursued its claim for cause under section 47(1)(c) of the Act in its submissions.

Based on the foregoing, I do not find the Landlord to have demonstrated cause for ending the tenancy under the One Month Notice for reasons relating to CA.

### *Smoking and Odours*

I find the Landlord is attempting to re-litigate the subject matter of the First Notice to end tenancy, which was settled at the hearing on December 9, 2021. I find the Landlord submitted evidence that may have supported the eviction sought under the First Notice, such as the environmental engineer reports and evidence from the previous upstairs tenant. However, I find the Landlord has not provided sufficient evidence to demonstrate that the Settlement was fundamentally breached by the Tenants smoking or diffusing essential oils in the rental unit after December 2021.

Moreover, I find the Landlord has not provided sufficient evidence to demonstrate that following the Settlement, there has been cause under any of sections 47(1)(d), (e)(ii), (e)(iii), and (f) of the Act due to smoking or odours created by the Tenants or their guests. I find the Landlord's evidence to be that the unit above was already uninhabitable by the time of the Settlement. I find the environmental engineer follow-up on March 21, 2022 indicates that air quality in the unit above the rental unit was assessed on that date, but does not indicate that the rental unit was assessed.

I find the Landlord's evidence of post-Settlement breaches to largely consist of handwritten odour logs from the current unnamed upstairs tenant, suggesting smells were detected in that tenant's unit from August to November 2022 and in 2023. This log includes notes such as "strong odour", "strong smoke smell in bathroom", times when the air quality alarm went off, readings in PPM, and comments about turning the VOC monitor on and off. I find that some of the entries in the logs are very brief and do not

refer to any smells or readings. I note I am not able to fully make out all of the handwriting. The Landlord did not call the current upstairs tenant as a witness to explain the odour logs. I also find the Landlord did not submit any pictures of the readings from the upstairs tenant's Air Quality Monitor to corroborate the odour logs.

More importantly, I find the Tenants were not given warnings about specific incidents of smoking or odours as they were alleged to have occurred in 2022 and onwards. I find the Landlord only issued general warning letters on May 31, 2022 and September 28, 2022. I find that during the time period covered by the odour logs and leading up to the issuance of the One Month Notice, the Landlord did not attempt to inspect the rental unit or otherwise take action to verify the complaints from the current upstairs tenant. I note I do not find the evidence to suggest that the Tenants had resisted the Landlord's inspections of the rental unit in the past.

Under these circumstances, I am unable to conclude on a balance of probabilities whether any smells or readings noted in the odour logs had occurred as claimed and were caused by the Tenants. Based on the evidence presented, I am unable to conclude that post-Settlement, the Tenants have smoked or created odours in the property to an extent that meets the threshold for cause under any of sections 47(1)(d), (e)(ii), (e)(iii), or (f) of the Act.

Since I do not find the Landlord to have established cause for ending this tenancy for any of the reasons stated on the One Month Notice, I order that the One Month Notice is canceled and of no force or effect.

Nevertheless, the Tenants are cautioned that regardless of whether it would be prohibited by the building bylaws or whether the Tenants have agreed to the bylaws, the Tenants must not smoke or create odours in or about the property that would:

- significantly interfere with or unreasonably disturb the Landlord or other occupants;
- seriously jeopardize the health, safety, or lawful right or interest of the Landlord or other occupants;
- put the Landlord's property at significant risk; or
- cause extraordinary damage to the Landlord's property.

## *2. Are the Parties entitled to reimbursement of the filing fee?*

As the One Month Notice has been set aside on this application, I grant the Tenants reimbursement of their filing fee under section 72(1) of the Act.



Pursuant to section 72(2)(a) of the Act, I authorize the Tenants to deduct \$100.00 from rent payable to the Landlord for the month of July 2023.

As the Landlord has not been successful in proving that the One Month Notice should be upheld, I dismiss the Landlord's claim for reimbursement of its filing fee without leave to re-apply.

### Conclusion

The One Month Notice is cancelled and of no force or effect. This tenancy shall continue until ended in accordance with the Act.

The Tenants' claim for reimbursement of the filing fee is granted. Pursuant to section 72(2)(a) of the Act, the Tenants are authorized to recover their filing fee from the Landlord through a one-time deduction of **\$100.00** from July 2023 rent.

The Landlord's claim for reimbursement of its filing fee is dismissed without leave to re-apply. The remaining claims made in the parties' applications are severed under the Rules of Procedure and dismissed with leave to re-apply. Leave to re-apply does not extend any applicable time limits.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period set out in subsection (1)(d). As a result, I find that neither the validity of this decision, nor my authority to render it, are affected by the fact that this decision was issued more than 30 days after the close of the proceedings.

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: June 23, 2023

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Residential Tenancy Branch