



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      TT: CNC, LRE, LAT, FFT  
                                 LL: OPC, MNDL-S, MNDCL-S, LRSD, FFL

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Tenant’s Application for Dispute Resolution was made on August 28, 2023 (the “Tenant’s Application”) and was amended on October 31, 2022 to include the cancellation of the One Month Notice. The Tenant applied for the following relief, pursuant to the Act:

- an order cancelling a One Month Notice for Cause dated October 20, 2023 (the “One Month Notice”);
- an order restricting the Landlord’s right to enter the rental unit;
- an order authorizing the Tenant to change the locks of the rental unit; and
- an order granting the recovery of the filing fee.

The Landlord’s Application for Dispute Resolution was made on November 15, 2023 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the Act:

- an order of possession based on the One Month Notice;
- a monetary order for damage, compensation, or loss,
- an order that the Landlord retain the Tenant’s deposits; and
- an order granting recovery of the filing fee.

The Tenant, the Tenant’s Interpreter J.S., and the Landlord attended the hearing at the appointed date and time. At the start of the hearing, the Landlord confirmed receipt of the Tenant’s Proceeding Package and evidence, however, the Landlord stated that they

did not receive the Tenant's Amendment dated October 31, 2023 seeking to cancel the One Month Notice. The Tenant stated that they served the amendment to the Tenant's Application to the Landlord by Canada Post Registered Mail on October 31, 2023. The Tenant provided the tracking receipt in support of the mailing.

Pursuant to Section 71 of the Act, I find the Landlord was sufficiently served with the Proceeding Package and evidence. Regarding the Tenant's amendment, I find that the Tenant provided sufficient evidence to demonstrate that the Landlord was served the amendment by Registered Mail on October 31, 2023. Pursuant to Section 89 and 90 of the Act, I find that the Landlord is deemed to have been served with the Tenant's Amendment five days later, on November 5, 2023.

The Landlord stated that they served their Proceeding Package to the Tenant by email. The Tenant confirmed receipt, however, indicated that it should have been sent by Registered Mail. I find that the Landlord was required to serve the Tenant with their Proceeding Package pursuant to Section 89 of the Act. I am satisfied however that the Tenant still received the Proceeding Package, therefore, I find that it was sufficiently served pursuant to Section 71 of the Act.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, an 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.

I find that the most important issue to determine is whether or not the tenancy is ending based on the One Month Notice.

The Tenant's request for an order restricting the Landlord right to enter the rental unit, or authorizing to change the locks are dismissed with leave to reapply. Similarly, the Landlord's monetary claims are also dismissed with leave to reapply.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice, pursuant to Section 47 of the *Act*?
2. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is not successful in cancelling the One Month Notice, is the Landlord entitled to an order of possession, pursuant to Section 55 of the *Act*?
4. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

A tenancy agreement was submitted between the parties which confirms the following terms of the tenancy; the tenancy began on September 1, 2019. Currently, the Tenant pays rent in the amount of \$1,915.31 which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$925.00, which the Landlord continues to hold.

The Landlord was provided an opportunity to explain why it is they are seeking to end the tenancy;

The Landlord stated that they can no longer afford the mortgage payments as they had to renew their mortgage at a higher interest rate. The Landlord stated that they discussed raising the rent with the Tenant or else the Landlord would need to sell the rental unit. As the Tenant declined to pay more rent, the Landlord wished to list the rental unit.

The Landlord stated that when the Landlord's Realtor attended the rental unit, it was discovered that the lock had been changed by the Tenant. The Landlord stated that the Tenant sent a copy of the new key to the Landlord. The Landlord stated that when she attended the rental unit to try the new key, the Tenant confronted her and dug her nails into the Landlord's wrist while she was trying the key. The Landlord stated that the Police attended.

The Landlord stated that the Tenant has refused the Landlord entry into the rental unit. The Landlord stated that the Tenant has grease built up around the stove vent which is a fire risk, mould in the rental unit, and storage on the balcony contrary to strata rules.

The Landlord stated that she served the Tenant with the One Month Notice on October 20, 2023 with an effective vacancy date of November 30, 2023, by Registered Mail. In their Application, the Tenant confirmed having received the One Month Notice on

October 24, 2023. The Landlord's reasons for ending the tenancy on the One Month Notice are;

*"The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed the landlord, seriously jeopardized the health and safety or lawful right of another occupant or the landlord, and put the landlord's property at significant risk"*

*"Tenant or person permitted on the property by the tenant has caused extraordinary damage to the unit or property"*

*"Tenant has not done required repairs of damage to the unit or property"*

*"The Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."*

In response, through the use of the Interpreter, the Tenant provided the following testimony;

The Tenant confirmed that she changed the locks as the Landlord would attend the rental unit without notice, in an attempt to harass her into leaving. The Tenant stated that they suspect the Landlord wants to end the tenancy to raise the rent.

The Tenant stated that the Landlord indicated they were selling the rental unit, however, they have not seen or heard from the Realtor. The Tenant stated that that Landlord provided several dates for showings, however, no one attended. The Tenant stated that she is willing to help the Landlord sell the rental unit, but there is no currently listing.

The Tenant stated that while the Landlord alleges she was assaulted by the Tenant, the Tenant stated that the Landlord entered her rental unit and assaulted her.

The Landlord referred to several emails submitted into evidence confirming that notice is given to the Tenant prior to entry. The Landlord stated that she wishes to attend the rental unit for the purpose of completing monthly condition inspections.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a Landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with the One Month Notice on October 20, 2023. The Tenant confirmed having received the notice on October 24, 2023. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act. After receiving the One Month Notice, the Tenant has 10 days to dispute the Notice. I find that the Tenant amended their Application on October 31, 2023 to include a claim to cancel the One Month Notice. I find that the amendment was made within the 10 day time limit.

In this case, I find that the Landlord's main focus is that they can no longer afford the mortgage payment, which seems to be their motivation to end the tenancy. I find that this demonstrates bad faith and had created a situation where the parties are in conflict and breaching the Act as a result.

The Tenant has a right to quiet enjoyment and peaceful occupation of the premises. At the same time, the Landlord has the right to enter under certain conditions. The *Act* addresses the rights and obligations of Landlords and Tenants with respect to entry into a rental unit.

The Residential Tenancy Branch Police Guideline 7 offers some useful information which is applicable to both parties in this situation;

A landlord must not enter a rental unit in respect of which the tenant has a right to possession unless one of the following applies:

- an emergency exists and the entry is necessary to protect life or property,
- the tenant gives permission at the time of entry, or
- the tenant gives permission not more than 30 days before the time of entry,
- the landlord gives the tenant written notice not less than 24 hours, and not more than 30 days before the time of entry.
- the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms,
- the tenant has abandoned the rental unit, or
- the landlord has an arbitrator's order authorizing the entry.

Regarding written notices, the notice must state a reasonable purpose for the entry and must give the date and time intended for the entry. The time stated must be between 8:00 a.m. and 9:00 p.m. Notices must also be served in accordance with the Act.

Where a valid notice has been given by the landlord it is not required that the tenant be present at the time of entry.

Where a notice is given that meets the time constraints of the Act, but entry is not for a reasonable purpose, the tenant may deny the landlord access. A "reasonable purpose" may include:

- inspecting the premises for damage,
- carrying out repairs to the premises,
- showing the premises to prospective tenants, or
- showing the premises to prospective purchasers.

However, a "reasonable purpose" may lose its reasonableness if carried out too often. Where possible the parties should agree beforehand on reasonable times for entry. Where the parties cannot agree on what are reasonable times, and the tenant's quiet enjoyment of the rental unit is interrupted (for example where the house is listed for sale and there are numerous showings of the rental unit), the tenant may apply for arbitration to suspend the rights of the landlord, or an Order that the landlord's right of entry be exercised only on conditions.

Where a tenant prevents a landlord entering, after a valid notice of entry has been given, the landlord may apply for an Order for entry at a specified time and for a specified purpose. The arbitrator can, at that time, determine if the reason for entry is a reasonable one. An arbitrator may find that the holding of an "Open House" by the landlord's realtor is not a reasonable purpose if the landlord cannot ensure the safety of the tenant's possessions.

In this case, the Landlord is seeking to end the tenancy based on the fact that the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

According to the Policy Guideline #8; a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To end a tenancy agreement for breach of a material term the party alleging a breach, whether landlord or tenant, must inform the other party in writing that there is a problem; that they believe the problem is a breach of a material term of the tenancy agreement; that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and, that if the problem is not fixed by the deadline, the party will end the tenancy.

I find that the Landlord did not communicate to the Tenant that denying the Landlord access to the rental unit was a breach of a material term of the tenancy agreement, nor did she indicate that the problems needed to be fixed by a reasonable deadline or else

the tenancy would end. For these reasons, I find that the Landlord did not provide adequate notice to the Tenant pursuant to section 45(3) of the Act.

The Landlord has also indicated on the Notice to End Tenancy that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed the landlord, seriously jeopardized the health and safety or lawful right of another occupant or the landlord, and put the landlord's property at significant risk.

## **Locks 10**

(1)The landlord must not change locks or other means of access to residential property unless the landlord provides each tenant with new keys or other means of access to the residential property.

(2)The landlord must not change locks or other means of access to a rental unit unless the tenant agrees and is given new keys.

(3)The tenant must not change locks or other means of access to

(a)common areas of residential property, unless the landlord consents to the change, or

(b)the tenant's rental unit, unless the landlord agrees in writing to, or the director has ordered, the change.

I find that the Tenant has breached Section 10 of the Act, and I order that the Tenant provide the Landlord a key to the lock so that they may gain access to the rental unit, WITH PROPER NOTICE. Proper noticed is outlined above. I find that this breach alone is not sufficient to end the tenancy. Should the Tenant fail to comply with this order, the Landlord is at liberty to serve a new One Month Notice.

During the hearing, the Landlord stated that there is grease around the fan in the kitchen, mould in the unit, and storage on the balcony. I find that the Landlord has provided that these issues have seriously jeopardized the health and safety or lawful right of another occupant or the landlord, and put the landlord's property at significant risk, caused extraordinary damage to the unit or property, and has not done required repairs of damage to the unit or property.

With respect to the assault, I find that the parties have provided differing versions of the incident. I find that the Landlord has provided insufficient evidence to demonstrate that they were assaulted by the Tenant.

In light of the above, I cancel the One Month Notice, dated October 20, 2023. I order the tenancy to continue until ended in accordance with the Act.

The parties are encouraged to abide be the terms set out in Policy Guideline 7 described above. I caution the tenant that should he unreasonably deny the Landlord or

the Realtor access to the rental unit after proper written notice is provided in accordance with the *Act*; or change the lock to restrict access, she is now sufficiently warned that this may give the Landlord sufficient cause to end the tenancy.

As the Landlord's Application was not successful, I find that they are not entitled to the return of the filing fee. Although the Tenant's Application to cancel the One Month Notice was successful, I find that they did breach the Act, therefore, I find that they are not entitled to the return of their filing fee.

### Conclusion

The One Month Notice issued by the Landlord dated October 20, 2023 is cancelled. The tenancy will 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: December 20, 2023

---

Residential Tenancy Branch