



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on March 26, 2020, in which the Tenant sought to cancel a 1 Month Notice to End Tenancy issued on March 13, 2020 (the "Notice") and recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for teleconference at 11:00 a.m. on May 21, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Tenant recover the filing fee?

## Background and Evidence

*Residential Tenancy Branch Rules of Procedure—Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

K.K. testified on behalf of the Landlord. He confirmed that this fixed term tenancy began October 22, 2018 for a one-year term following which it became a month to month tenancy. Monthly rent was \$3,700.00 and was not raised during the tenancy.

The reasons cited on the Notice are as follows:

The 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 Landlord provided the following additional details on the Notice:

The tenants violated the bylaws of the city of [name withheld]. Please see the attached letter [identifying details removed]

The letter referenced in the Notice was also provided in evidence and reads in part as follows:

“...A recent inspection of the above property has revealed that you have permitted a boarding use while having a secondary suite. Your property is zoned RF – Single Family Residential. This zoning does not permit the use on the property.

You are required stop the illegal use by February 21, 2020.

We will conduct a follow-up inspection to determine compliance with the by-law and whether further action is required by the By-law Enforcement Section...”

The parties attended a previous arbitration before the Residential Tenancy Branch in November of 2019 (the “November Hearing”). The file number for the November Hearing is included on the unpublished cover page of this my Decision. In the Application giving rise to the November Hearing the Tenant sought to cancel a 1 Month

Notice to End Tenancy for Cause issued by the Landlord, in which the Landlord alleged that the Tenant had allowed an unreasonable number of occupants in the unit and had jeopardized the health and safety of the Landlord and other occupants of the rental unit. In the November Hearing the Landlord also claimed that the suite was illegal and he was required to remove the stove.

The Tenant was successful and the Arbitrator cancelled the Notice to End Tenancy. The Arbitrator further found that the Tenant rented the unit with a fully contained basement suite and was given permission to rent it out. The Arbitrator noted that the Landlord was at liberty to legalize the suite.

K.K. stated that following the November Hearing, the Landlord went to the City Hall and asked about legalizing the suite. He stated that the City required "a lot of work to make the suite legal", including soundproofing and fireproofing. The Landlord then hired a contractor to look at the suite in January 2020. K.K. stated that they were informed that the cost to legalize the suite would be \$30,000 to \$40,000; K.K. claimed this was not within the Landlord's financial means.

K.K. confirmed that the City has not done the follow up inspection which was referenced in the letter.

K.K. stated that they gave the Notice to the Tenant to stop the Tenant from renting out the basement suite. He continued that following service of the Notice, they received calls from the neighbours regarding police attendance at the rental unit.

K.K. stated that the Landlord is also worried that she will not be insured as her insurance only covers one family.

In response to the Landlord's submissions, the Tenant testified as follows.

The Tenant confirmed that she was aware that the Landlord received a letter from the City. The Tenant stated that her understanding of the letter is that the City was worried that she was renting out rooms to boarders *and* renting out the suite. She denied renting rooms out to boarders or renting rooms out on a short-term basis. The Tenant stated that she charges the downstairs renters \$1,800.00 per month which she relies on in order to afford the rent for the rental home.

The Tenant submitted that it is the Landlord's responsibility to prove the activity is illegal, and she does not believe the letter from the City proves she is engaged in any illegal activity.

In response to K.K.'s allegation that the Landlord's insurance might be negatively affected the Tenant noted that the Landlord failed to provide any letters from their insurer to support this. The Tenant submitted that the Landlord may need to pay more for insurance due to the number of suites or people living in the home, but they did not provide any evidence to show that the Landlord was denied insurance.

In any case, the Tenant confirmed she was agreeable to providing the names, age and family relationship of those who lived in the rental home. During the hearing she advised that she lives in the rental unit with her husband, Z.W., her mother Z.Z., her son, T.W., her daughter, C.A. and her family friend B.B. She confirmed she rents the basement to C.C. who lives there with his three family members. The Tenant stated that she does not have a residential tenancy agreement with C.C., nor does she know the names his family members, however she was willing to provide that information to the Landlord on the basis of K.K.'s assertion that such information was required for insurance purposes.

In terms of the Landlord's allegation that two people arrested at the rental property, the Tenant stated that this occurred after the Notice was issued and is in no way related to the letter from the City. The Tenant also stated that it was her understanding that the arrests were made by mistake.

The Tenant stated that the real reason the Landlord wants to end her tenancy is that that the Landlord wants to sell the house. The Tenant noted that the Landlord's friend, K.K., who assisted her in the hearing and provided testimony on the Landlord's behalf, is in fact the Landlord's realtor. She stated that they still have a for sale sign in front of the house and K.K.'s name is on the house.

In reply, K.K., confirmed he is the Landlord's realtor. He confirmed that he was the Landlord's friend prior to being her realtor. He also stated that the house is not currently listed for sale. He stated that the sign should have been removed.

### Analysis

Ending a tenancy is a significant request and must only be done in accordance with the *Residential Tenancy Act*. Section 47 of the *Act* allows a Landlord to end a tenancy for cause. In this case, the Landlord seeks to end the tenancy for cause pursuant to section 47(1)(e) which reads as follows.

**47** (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(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;

*Residential Tenancy Branch Policy Guideline 32—Illegal Activities* provides the following guidance:

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

As aptly noted by the Tenant, the Landlord bears the burden of proving the Tenant is engaged in illegal activity. In this case, I find the Landlord has failed to meet that burden of proof. The letter from the City is unclear in terms of what "illegal activity" is occurring and what statute or bylaw the Tenant is alleged to be contravening. Further, I accept the Tenant's testimony that she does not have any boarders or short-term rentals, rather, she rents the basement suite out to a family on a month to month tenancy. In all the circumstances, and I am not satisfied the Tenant has engaged in illegal activity which is serious enough to warrant terminating her tenancy.

The Landlord's agent testified that the police attended the rental unit and arrested two of the downstairs renters. The Tenant stated that to her knowledge this was a mistake as the police mistook the downstairs renters for others. In any event, this is not related to the reasons the Landlord issued the Notice and not relevant to the issues before me.

Even in the event I had found this arrest to be relevant to the reasons set out in the Notice (which I do not), I find the Landlord has submitted insufficient evidence to support a finding that the arrests should result in an end to this tenancy. The arrests appear to involve the downstairs renters, for reasons which were not disclosed to me, and may have been done erroneously. As noted in the *Guidelines*, the Landlord must provide evidence as to the extent of the Tenant's illegal activities' interference with the quiet enjoyment of other occupants, the extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants; in this case I was not provided any such evidence.

The Landlord alleged her property may not be insured due to the number of people living in the rental unit and the suite and the fact that they are not one family. Aside from her realtor's testimony in this regard, I was not provided any documentary evidence to support this claim. As noted by the Tenant, it may simply be the case that the Landlord needs to increase their insurance coverage due to the fact there are two separate suites in the rental unit.

Notably, the Tenant agreed to providing the Landlord with details regarding the occupants of the rental property. As such, I Order as follows:

**By no later than June 4, 2020, the Tenant shall provide the Landlord a list of all persons living at the rental property, their birthdates and their familial relationship to the other tenants/occupants.**

### Conclusion

The Tenant's Application for an Order canceling the Notice is granted. The tenancy shall continue until ended in accordance with the *Act*.

As the Tenant has been successful in her Application, she is entitled to recover the \$100.00 filing fee. Pursuant to section 72 of the *Act* the Tenant may reduce her June's rent by \$100.00 as recovery of this fee.

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 28, 2020

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Residential Tenancy Branch