



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BAYVIEW GARDENS PARTNERSHIP 3 and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on December 3, 2020, wherein the Tenant sought to cancel a 1 Month Notice to End Tenancy for Cause issued on November 30, 2020 (the "Notice") and recovery of the filing fee.

The hearing was conducted by teleconference at 11:00 a.m. on February 26, 2021. The Tenant called into the hearing, as did two witnesses on her behalf, K.F. and R.S. The Landlord's Resident Manager, S.W., Assistant Resident Manager, K.C. and former Resident Manager, L.H. also called into the hearing. The Tenant and K.C. provided affirmed testimony and were afforded the opportunity to provide evidence orally and in written and documentary form and to make submissions to me.

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure* (the "Rules"). The Rules provide timelines for the exchange of evidence prior to hearings. The parties agreed that all evidence that each party provided had been exchanged. The only issue arising with respect to evidence was the late delivery of the Tenant's reply evidence. In support of her request to cancel the Notice the Tenant provided photos of the rental unit which she took shortly before the hearing; those photos showed the rental unit and patio as being clean and free of clutter. K.C. confirmed that they received the Tenant's late evidence, but did not review it, and sent it back as they did not know what it was. K.C. blamed this on a miscommunication at their office. Despite not reviewing this evidence, K.C. did not oppose the consideration of this evidence.

No other issues with respect to service or delivery of documents or evidence were raised. 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.

### Preliminary Matter

*Rule 4.2* of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. The authority to amend is also provided for in section 64(3)(c) of the *Act* which allows an Arbitrator to amend an Application for Dispute Resolution. On the Application the Tenant named the property manager, S.W., as Landlord. A review of the tenancy agreement confirms the Landlord is a partnership. I therefore Amend the Tenant's Application to correctly name the Landlord.

### 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.

The Landlord's Assistant Resident Manager, K.C., testified as follows. He confirmed that this tenancy began December 1, 2018. Monthly rent was originally \$1,500.00 per month and is now \$1,570.00 including parking.

The Landlord issued on November 30, 2020. The reasons cited on the Notice were as follows:

- the Tenant or a person permitted on the residential property by the Tenant has
  - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - put the landlord's property at significant risk.

The Landlord indicated the following additional information on the Notice:

Resident has failed to remove the accumulated boxes and materials in the suite and on the patio. These boxes and materials block access to the exit from the bedroom, living room, and patio areas and make it unsafe and difficult to exit in case of fire or emergency. The boxes are cardboard and pose a risk if there is a fire.

Documentary evidence indicates the Notice was served by posting to the rental unit door on November 30, 2020.

K.C. stated that for almost two years they have issues with the Tenant in terms of the condition of the rental unit and her outdoor patio area. He stated that the rental unit is filled with boxes, bins, and garbage bags, which impede access within the rental unit as well as egress. K.C. stated that for two years the Landlord has been trying to address this issue. He described a pattern in which the Landlord asks the Tenant to clean up and then the Tenant denies any request to inspect the unit, she also delays, and then she says she can't deal with it because she is injured etc.

K.C. stated that he has taken photos of the rental unit to show the condition of the rental unit over the course of the tenancy, some of which were provided in evidence before me. He confirmed that the most recent photos are from October 30, 2020 when they did an inspection of the rental unit.

K.C. stated that they have sent the Tenant numerous warning letters regarding the condition of her rental; copies of those warning letters were also provided in evidence before me.

K.C. testified that the fire inspector has attended on two occasions, most recently on December 1, 2020. Following the December 1, 2020 attendance of the fire inspector the inspector provided a report which included the following:

1. Excessive storage in [rental unit] poses a hazard to occupant + building residents stored materials in all areas of the suite to be reduced ASAP
2. Clear access + egress routes must be maintained to all areas within the suite.
3. Maintain adequate clearance 18" around all electrical appliances
4. Do not store combustibles on or around stove.

In support of her request to cancel the Notice the Tenant provided photos of the rental unit which she took shortly before the hearing; those photos showed the rental unit and patio as being cleaned up. As noted previously, the Landlord did not review those photos nor did the Landlord oppose their consideration. When I informed K.C that the

photos showed that the Tenant had cleaned her unit, K.C. stated that he was not surprised to hear that the Tenant has cleaned up the rental unit but reiterated that the Landlord was not prepared to continue with the tenancy as they believe as soon as the hearing is over the Tenant will allow the rental unit to revert to an unacceptable condition.

K.C. also stated that he walks by the outdoor patio every day and saw on the day of the hearing that there are all kinds of bins and tables and stuff out there such that even if she had cleaned up at the time the photos were taken, it is back to the way it was.

K.C. stated that one of the Tenant's witnesses, was one of the original people to complain about the smell from the rental unit. In support K.C. referenced a document provided in the Landlord's evidence from February 16, 2020 wherein K. and R. are confirmed as complaining about the rotten smell in the "east entrance hall near the back door"

In response to K.C.'s testimony and submissions, the Tenant testified as follows. The Tenant stated that she has significantly cleaned her rental unit as well as the outdoor area. In support she provided numerous photos which showed these areas as being clean and free of clutter. The Tenant admitted that she has had issues in the past. She stated that she has had assistance in the past with dealing with clutter, but when COVID-19 "hit" she could not get anyone else in to help her. The Tenant also stated that she is injured, and this impacts her ability to move items out of the rental unit and clean. Despite this, the Tenant claimed that she has been ruthlessly getting rid of items and has disposed of many boxes and other items as shown in her photos. She stated that she is in her 60's and realizes that she no longer needs all this stuff and now wants to "travel lightly". She stated that she is not just doing it for the management, she is doing it for her. She claimed that she doesn't want it to be the way it was and is committed to making the changes necessary to keep her rental unit free of clutter.

In terms of the Property Manager's claim that her outside area is again cluttered, the Tenant stated that there is only one table outside. She also stated that there are some Rubbermaid bins that she is sorting through right now as they are full of paper. She denied the Property Manager's allegation that she has allowed the outdoor area to return to its previous condition.

The Tenant also provided photos of other outdoor decks/balconies, including one occupied by the Assistant Resident Manager, which showed that other residents also store items on their outdoor areas.

## Analysis

Ending a tenancy is a significant request. In this case, the Landlord seeks to end the tenancy pursuant to section 47(1)(d)(ii) and (iii) of the *Act*; the specific sections read 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:

- ...  
(d)the tenant or a person permitted on the residential property by the tenant has
  - ...  
(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.

In the case before me the Landlord alleges that the Tenant has created a safety risk due to the accumulation of boxes and other items both in the rental unit and on the outdoor patio. Photos submitted by the Landlord confirm that the rental unit has, at times, been in such a condition.

The Tenant concedes that she has had issues in the past but is committed to keeping her rental unit clean and free of clutter. She submitted numerous photos showing the current condition of the rental unit as tidy and with ample room for access both within the rental unit and outdoors. I found the Tenant to be sincere in her testimony and her commitment to keeping her rental unit in a reasonably clean condition. This is not the case where the tenant lacks insight into the condition of their rental unit and the safety risk created by lack of access to doorways; rather, I find that this Tenant acknowledges that the condition in which she formerly kept the unit was unacceptable and has taken corrective action to improve the condition of the rental unit and patio.

Section 47 requires that the Landlord prove that the Tenant has *seriously jeopardized* the health or safety or a lawful right or interest of the landlord or another occupant or put the landlord's property at *significant risk*. The onus of proving the tenancy needs to end on this basis is high. The Fire Inspector gave specific instructions to the Tenant as to the steps needed to remedy the situation. While the photos of the rental unit provided by the Landlord confirm the Tenant has kept her rental unit and outdoor patio in an unsightly condition, I find, based on the recent photos submitted by the Tenant, as well as her testimony, that she has complied with the Fire Inspector's direction and has cleared her rental unit and patio to an acceptable condition. I am also satisfied the

Tenant understands the severity of the situation, as well as the need to take corrective action to ensure her rental unit and patio have safe pathways and egress on an ongoing basis.

While the Landlord is hesitant to give this Tenant another chance, I believe one is warranted in this situation. I therefore grant the Tenant's request to cancel the Notice. The tenancy shall continue until ended in accordance with the *Act*.

The Tenant is reminded that, pursuant to section 32 of the *Act*, she must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access; this includes ensuring her outdoor patio area is not unsightly or cluttered to the extent it impedes access. Further, the Tenant is reminded that should she require assistance from others in order to ensure her rental unit is maintained in a reasonably clean and sanitary condition, she must seek assistance before the situation deteriorates to the point where the Landlord is forced to issue warning letters or issues a further notice to end tenancy for cause.

While the Tenant has been successful in her Application, I decline her request for recovery of the filing fee pursuant to section 72 of the *Act*. I find that a hearing of this matter was necessary to ensure the parties had a forum to discuss the Landlord's expectations and for the Tenant to provide the necessary assurances to promote a successful tenancy.

### Conclusion

The Tenant's request to cancel the Notice is granted.

The Tenant's request to recover the filing fee is denied.

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 10, 2021

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Residential Tenancy Branch