



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Gateway Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, LRE

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on December 23, 2020 (the "Application"). The Tenants applied to dispute a One Month Notice to End Tenancy for Cause dated December 23, 2020 (the "Notice"). The Tenants also sought an order suspending or setting conditions on the Landlord's right to enter the rental unit.

The Tenants appeared at the hearing. The Agents for the Landlord, B.W. and C.R., appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The parties provided the correct rental unit address and Landlord name, both of which are reflected on the front page of this decision.

Pursuant to rule 2.3 of the Rules of Procedure (the "Rules"), I advised the Tenants at the outset that I would consider the dispute of the Notice and dismiss the request for an order suspending or setting conditions on the Landlord's right to enter the rental unit as it is not sufficiently related to the dispute of the Notice. The request for an order suspending or setting conditions on the Landlord's right to enter the rental unit is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the "Act").

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted and the oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

### Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started May 01, 2020 and was for a fixed term ending October 31, 2020. The tenancy then became a month-to-month tenancy. The agreement includes term 17 about the conduct of the Tenants.

The Notice was submitted as evidence. The grounds for the Notice are:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord and seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.
2. 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 or the Landlord.
3. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

There was no issue that the Notice was served and received December 23, 2020.

In relation to the grounds for the Notice, C.R. testified as follows. Tenant J.D. tried to attack another tenant of the building on December 23, 2020. Tenant M.R. was slamming doors and fighting with Tenant J.D. from 1:30 a.m. to 3:30 a.m. Other tenants complained about this. A breach letter was given to the Tenants November 12, 2020 because they were playing loud music after 10:00 p.m. An agent for the Landlord approached the Tenants who raised their voices, were cursing and were using aggressive verbal behaviour. On January 07, 2021, another tenant wrote a statement about Tenant M.R. allowing people to stay at the rental unit who were nuisances, high

and intoxicated. Tenant M.R. accused the other tenant of racism because they filed a complaint with the caretaker. The other tenant was forced to move.

C.R. read out a statement in evidence from J.P., an agent of the Landlord.

It was my understanding from C.R.'s submissions that C.R. was simply reading out the complaints which were submitted in evidence and are before me.

In relation to illegal activity, B.W. testified that Tenant J.D. kicking on another tenant's door wanting to fight and threatening to assault the other tenant as well as drug use in the building is the illegal activity the Landlord is relying on.

B.W. testified that the Landlord's primary concern is safety and that other tenants report abusive behaviour by the Tenants.

In relation to a breach of a material term, the Agents confirmed the Landlord is relying on term 17 of the tenancy agreement. In relation to why term 17 is a material term, B.W. stated that it is material to the quiet and comfort of tenants and that other tenants have to be assured they can get a good sleep and not worry about whether someone is going to kick their door in the middle of the night. B.W. pointed out that term 17 states that the Landlord can end the tenancy for a breach of the term.

Tenant M.R. testified as follows. On December 23, 2020, the tenants next door were partying, fighting and slamming doors. The Tenants were asleep and woken up by the tenants next door. Tenant M.R. went over and knocked on the tenants' door and spoke to one of the tenants. A second tenant rushed out at Tenant M.R. as if she was going to hit Tenant M.R. Tenant J.D. observed the second tenant rush out at Tenant M.R. and got defensive. Tenant M.R. made sure Tenant J.D. did not get closer to the other tenants and the Tenants called the police. The Tenants tried to tell an agent for the Landlord that it was their neighbours who were the issue on December 23, 2020. Tenant J.D. was previously experiencing some "mental health issues" and went to treatment three times. Other tenants in the building are also causing problems.

Tenant M.R. testified about an incident where she swore at another tenant who had made rude or inappropriate comments about how one of her guests looked. Tenant M.R. said this other tenant made snarky comments to her. Tenant M.R. said this other tenant moved out four or five days later.

Tenant J.D. testified as follows. Tenant J.D. never kicked someone's door. If someone complained about Tenant J.D. kicking their door, the complaint is false. Tenant J.D. does not know who said Tenant J.D. kicked their door. The Tenants were not partying on December 23, 2020. The Tenants worked night shift at the time and were asleep. The tenants next door were fighting. Tenant J.D. has moved out of the rental unit.

I asked the Agents for the Landlord about the complaints submitted as they do not show who made the complaint. The Tenants said they do not know who made the complaints. C.R. said the complaints are not from the same tenants.

The Landlord submitted the following documentary evidence:

- A complaint about Tenant M.R. dated December 23, 2020. This does not indicate who made the complaint.
- A complaint about Tenant M.R. dated December 23, 2020. This does not indicate who made the complaint.
- A complaint dated January 07, 2021. This does not state who the complaint is about, what unit it relates to or who made the complaint.
- A statement dated January 08, 2020 about Tenant J.D.'s behaviour towards agents for the Landlord. It states that Tenant J.D. was harassing the building caretaker by entering his personal space and video taping him. It states that Tenant J.D. was harassing the caretaker with tenant/rental questions and accusations. It states that Tenant J.D.'s behaviour was erratic and he "appeared high on drugs". It refers to other complaints from tenants in the building about Tenant J.D.
- A breach letter to the Tenants dated November 12, 2020.

### Analysis

The Notice was issued pursuant to section 47 of the *Act* and the following subsections:

- (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...

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(iii) 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

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

The Tenants had 10 days from receiving the Notice to dispute it pursuant to section 47(4) of the *Act*. There was no issue that the Tenants received the Notice December 23, 2020. The Application was filed December 23, 2020, within time.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

**1. *Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord and seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.***

The issue before me is whether the Landlord had grounds to issue the Notice on December 23, 2020.

I place no weight on the January 07, 2021 complaint given it does not state who the complaint is about, what unit it relates to or who made the complaint. This is not compelling evidence against the Tenants.

The January 08, 2020 statement relates to an incident which occurred December 28, 2020, after the Notice was issued. This incident cannot form the basis for the Notice given it occurred after the Notice was issued. I also note that I assume the statement was written in 2021 given it relates to an incident in December of 2020.

In relation to the December 23, 2020 incident, the parties disagree about what occurred and who was at fault for what occurred. The evidence before me to support the Landlord's version of events includes two written complaints. I do not find the complaints to be compelling evidence as they are not detailed and I cannot determine who wrote them. In the absence of further evidence, I am not satisfied as to what occurred December 23, 2020 and am not satisfied this incident gave the Landlord grounds to end the tenancy.

The remaining documentary evidence before me to support the grounds for the Notice are the statement dated January 08, 2020 (2021) and the breach letter to the Tenants dated November 12, 2020.

As stated, the December 28, 2020 incident outlined in the January 08, 2020 (2021) statement cannot form the basis for the Notice. The January 08, 2020 (2021) statement also includes general statements about Tenant J.D. and other tenants complaining about Tenant J.D. However, I would expect to see documentary evidence of other tenants complaining or hear from other tenants as witnesses. I have already outlined the issues with the complaints submitted. The Landlord did not call witnesses at the hearing.

I do have concerns about the notation in the breach letter that the Tenants raised their voices, cursed and showed aggressive verbal behaviour towards an agent for the Landlord on November 12, 2020.

The threshold for ending a tenancy is high as is clear from the use of the words "significantly" and "seriously" in section 47(d) of the *Act*. Here, I find the Landlord has provided evidence about one concerning incident on November 12, 2020 as well as the January 08, 2020 (2021) statement with general comments about Tenant J.D. In the absence of further evidence, I am not satisfied the behaviour of the Tenants which has been proven, and can form the basis for the Notice, meets the high threshold for ending a tenancy.

Given the above, I am not satisfied the Landlord has proven this ground for the Notice.

**2. *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 or the Landlord.***

The illegal activity alleged by the Landlord is Tenant J.D. kicking on another tenant's door wanting to fight and threatening to assault the other tenant as well as drug use in the building.

I am not satisfied based on the evidence provided that the Tenants have been using drugs in the building. The only compelling documentary evidence of this is the statement from J.P. dated January 08, 2020 (2021) which says that Tenant J.D. "appeared high on drugs" on December 28, 2020 and was "apparently high or drunk" during an incident involving another tenant. Again, the December 28, 2020 incident cannot form the basis for the Notice. Further, I am not satisfied the statements and observations of J.P. are sufficient to prove Tenant J.D. was using drugs at the relevant times.

In relation to Tenant J.D. kicking on another tenant's door wanting to fight and threatening to assault the other tenant, I understand this to relate to the December 23, 2020 incident. The Tenants denied this occurred. As stated above, I am not satisfied based on the evidence provided as to what occurred December 23, 2020.

I am not satisfied the Landlord has proven illegal activity and therefore am not satisfied the Landlord has proven this ground for the Notice.

**3. *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.***

The Agents for the Landlord relied on term 17 of the tenancy agreement and submitted that the Tenants have breached this term.

Policy Guideline 8 deals with material terms in a tenancy agreement and states:

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 determine the materiality of a term during a dispute resolution hearing, the

Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. **It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.**

The question of whether or not a term is material is determined by the **facts and circumstances surrounding the creation of the tenancy agreement in question**...During a dispute resolution proceeding, the Residential Tenancy Branch will look at the **true intention of the parties** in determining whether or not the clause is material...

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof...

[emphasis added]

Term 17 relates to the conduct of tenants. For example, the term states that tenants must not “disturb, harass, or annoy another occupant of the residential property, the landlord, or a neighbour.” It also states, “The landlord may end the tenancy pursuant to the Act as one of his remedies.”

I am not satisfied based on the submissions or evidence provided that term 17 is a material term of the tenancy agreement. I do not see where in the tenancy agreement it states that term 17 is a material term and the Agents could not point to where it states this. The statement in term 17 that the Landlord may end the tenancy pursuant to the Act as one of their remedies is not the equivalent of a statement that the term is a material term of the tenancy agreement. The Agents did not provide evidence about the facts and circumstances surrounding the creation of the tenancy agreement or the intention of the parties. Further, I am not satisfied that the most trivial breach of term 17 should give the parties the right to end the agreement given what term 17 addresses. For example, term 17 prohibits annoying other tenants. I do not accept that the Landlord should be permitted to end the tenancy over one small or insignificant annoyance of another tenant.

I acknowledge that the Landlord issued the Tenants the breach letter stating that term 17 is a material term of the tenancy agreement. However, the Landlord cannot unilaterally decide that term 17 of the tenancy agreement is a material term. As stated



in Policy Guideline 8, both parties must agree that the term is a material term and it is the creation of the tenancy agreement that is relevant.

In the circumstances, I am not satisfied term 17 of the tenancy agreement is a material term and therefore I am not satisfied the Landlord has proven this ground for the Notice.

Given the above, I am not satisfied the Landlord has proven the grounds for the Notice. The Notice is therefore cancelled. The tenancy will continue until ended in accordance with the *Act*.

### Conclusion

The Application is granted. The Notice 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 *Act*.

Dated: March 24, 2021

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Residential Tenancy Branch