



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC, OLC, FFT**

### Introduction

This hearing was convened as a result of two applications for dispute resolution under the *Residential Tenancy Act* (the “Act”). The first application (“First Application”) was for:

- cancellation of a One Month Notice to End Tenancy for Cause dated February 26, 2022 (“10 Day Notice”) pursuant to section 46.

The second application (“Second Application”) was for:

- cancellation of the One Month Notice to End pursuant to section 46; and
- an order for the Landlord to comply with the Act, *Residential Tenancy Regulations* and/or the tenancy agreement pursuant to section 62.

Three agents (“LF”, “LL” and “SS”) for the Landlord, the Tenant and the Tenant’s advocate (“DD”) and attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

DD stated the Notice of Dispute Resolution (“First NDRP”) for the First Application was served on the Landlord by registered mail on March 11, 2022. DD provided the Canada Post tracking number for service of the First NDRP on the Landlord. LF acknowledged the Landlord received the First NDRP. I find the First NDRP was served on the Landlord in accordance with the provisions of section 89 of the Act.

DD stated the Tenant served his evidence on the Landlord in-person on June 2, 2022. LF acknowledged the Landlord received the Tenant’s evidence. I find the Tenant’s evidence was served on the Landlord in accordance with section 88 of the Act.

LF stated the Landlord served its evidence on the Tenant by registered mail on June 3, 2022. LF provided the tracking number for service of the Landlord's evidence on the Tenant. The Tenant acknowledged he received the Landlord's evidence. I find the Landlord's evidence was served on the Tenant in accordance with section 88 of the Act.

#### Preliminary Matter – Service of Notice of Dispute Resolution for Second Application

The Tenant acknowledged he did not serve the Notice of Dispute Resolution Proceeding ("Second NDRP") for the Second Application on the Landlord. As the Tenant did not serve the second NDRP on the Tenant in accordance with the provisions of section 89 of the Act, I dismiss the Second Application in its entirety.

#### Issues to be Decided

Is the Tenant entitled to:

- cancellation of the 1 Month Notice?
- if the 1 Month Notice is not cancelled, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

#### Background and Evidence

While I have considered the documentary evidence and the testimony of the Landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the Application and my findings are set out below.

The parties agreed the tenancy commenced on May 1, 2019, on a month-to-month basis, with rent of \$700.00 payable on the 1<sup>st</sup> day of each month. The parties agreed the rent is now \$710.00 per month. The Tenant was to pay a security deposit of \$350.00 by April 25, 2019. LF stated the Tenant paid the security deposit and it is currently holding the deposit in trust on behalf of the Tenant. The Landlord stated the Tenant paid the rent for June 2022.

The Landlord stated the 1 Month Notice was served on the Tenant's door on February 25, 2022. The Tenant acknowledged receiving the 1 Month Notice on his door. I find the Landlord served the 1 Month Notice on the Tenant pursuant to the provisions of section 88 of the Act.

The 1 Month Notice stated the causes for ending the tenancy were that the Tenant, or a person permitted on the property by the tenant, has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- put the landlord's property at significant risk
- engaged in illegal activity that has, or is likely to damage the landlord's property
- 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 landlord
- has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.

The 1 Month Notice provided the following details for the causes to end tenancy:

On September 23, 2021, building caretaker reported on someone filled the building caretaker's mail box with unknown liquid, all documentation were soaked. On September 27, 2021, there was an attempted break into a tenant's mail box, landlord had to replace the mail box lock. On October 4, 2021, some building notices were ripped from the building board, it was found crumpled in the basement floor stairwell landing. The push pins were under the stairwell door jamming its operation. Also the same stairwell was littered. In October and November, Landlord quoted and installed a security camera system on the purpose to catch the suspect, total cost \$3087.00. On November 1, 2021, building caretaker found an egg smashed on his suite door. On February 12, 2022 at 1:28 pm, Tenant was caught on security camera to pour liquid into building caretaker's mailbox again and stealing Landlord's documentation. Based on the history, Landlord is making application for a one month notice to end tenancy.

LF stated that the rental unit is located in a building that houses low-income seniors between the ages of 65 to 90 years of age. LF stated the Landlord was trying to run a retirement home in which the tenants feel safe.

LF stated that, on September 23, 2021, someone filled the caretaker's mailbox with an unknown liquid. LF stated that, on October 4, 2022, a notice was ripped off the notice board for tenants and it was subsequently found crumpled in the basement floor stairwell. LF stated that on, November 1, 2022, an egg was smashed on the caretaker's door. LF admitted the Landlord does not have any direct evidence that the Tenant was the person responsible for the foregoing incidents.

LF stated that, as a result of the three incidents, the Landlord had security cameras installed in certain locations in the building at a cost of \$3,087.00. LF stated that on February 12, 2022, one of the security cameras recorded a person pouring liquid into the caretaker's mailbox and management request forms went missing. LF stated two tenants of the building identified the Tenant as the person recorded in the video. LF stated the Landlord LF stated that, although the police investigated the February 12, 2022 incident, the value of the items taken by the Tenant did not warrant criminal charges. LH stated the Landlord did not serve the Tenant with a notice warning him about his behavior and that a notice to end tenancy would follow if there was a recurrence. LF stated that the Landlord inferred that, as the Tenant was recorded pouring a liquid in the caretaker's mailbox on November 1, 2022, the Tenant was responsible for the previous three incidents that occurred on September 23, October 4, and November 1, 2021.

When I asked what evidence the Landlord had of the Tenant being engaged in an "illegal activity", LH stated the Landlord was not pursuing the causes for ending the tenancy stated in the 1 Month Notice that were based on the Tenant engaging in an illegal activity.

The Tenant admitted he was the person recorded in the video on February 12, 2022 and admitted he poured liquid into the caretaker's mailbox on September 23, 2022. The Tenant denied he removed the notice from the notice board on October 4 and denied smashing an egg on the caretaker's door on November 1, 2022. DD stated the Tenant has mixed alcohol and medications that cause the Tenant to behave inappropriately. DD entered into evidence a note dated May 10, 2022 from the Tenant's physician which corroborated her testimony.

## Analysis

Subsections 47(1)(d)(i), 47(1)(d)(ii), 47(1)(d)(iii) and 47(4) of the Act state:

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

(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;

[...]

(4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

[emphasis in italics added]

LF stated a notice was ripped off the notice board and thrown away in the basement of the residential property on October 4, 2022 and the caretaker's door was egged on November 1, 2022. LF admitted that the Landlord did not have any video evidence or any witnesses to these incidents. The Tenant denied he was responsible for these two incidents. I find the Landlord has not satisfied the burden of proof, on a balance of probabilities, to establish the Tenant was responsible for these incidents.

LF stated that on September 23, 2021, someone filled the caretaker's mailbox with an unknown liquid. LF stated that on February 12, 2022, one of the security cameras recorded a person pouring liquid into the caretaker's mailbox and management request forms went missing. LF stated the February 12, 2022 incident was recorded by a security camera. The Tenant admitted he was responsible for the incidents on September 23, 2021 and February 12, 2022. DD stated the Tenant's behavior was related to mixing alcohol with medications and she submitted a note from the Tenant's physician to corroborate her testimony. LF stated that, although the police were informed of the incident on February 12, 2022, they did not lay charges against the

Tenant as the value of the items taken was insufficient. There was no evidence that the liquid poured into the caretakers mailbox was toxic or dangerous.

All of the causes set out under subsections 47(1)(d)(i), 47(1)(d)(ii) and 47(1)(d)(iii) use the adjective “significantly” or “seriously”. This means the Landlord must prove that the activity or behavior described in those sections must be sufficient to warrant the eviction of the Tenant. The mischievous behavior of the Tenant on September 23, 2021 and February 12, 2022 interfered with a lawful right of the Landlord and the theft of the management request forms on February 12, 2022 entailed a small cost to the Landlord. However, I find the Landlord has not proven that the incidents on September 23, 2021 and February 12, 2022 reached the threshold of being “significant” or “unreasonable” as required by the provisions of either subsections 47(1)(d)(i), 47(1)(d)(ii) or 47(1)(d)(iii). Based on the above, I find the Landlord has not established any of the causes listed in subsection 47(1)(d). As such, I order the 1 Month Notice to be cancelled. The tenancy continues until ended in accordance with the Act.

### Conclusion

The 1 Month Notice is cancelled. The tenancy continues 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: June 19, 2022

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Residential Tenancy Branch