



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, LAT, FF

### Introduction

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenants applied for an order cancelling a One Month Notice to End Tenancy for Cause (Notice/1 Month Notice), issued by the landlord, authorization to change the locks to the rental unit, and to recover the cost of the filing fee.

The tenants, the landlord, and the landlord's daughter-in-law/translator/assistant (SS) attended the hearing, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The tenants confirmed receipt of the landlord's evidence. The landlord and SS said the landlord did not open the USB stick when received, which contained the tenants' evidence. The landlord said they did not understand technology.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters –

Rule 2.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants indicated two separate matters of dispute on the application, the most urgent of which is the application to cancel the 1 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to cancel the 1 Month Notice and the tenant's application to recover the cost of the filing fee at this proceeding. The balance of the tenants' application is dismissed, with leave to re-apply. Leave to reapply is not an extension of any applicable time limit.

Additionally, Rule 3.10.5 requires that a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence. Further, if a party is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered. I will address whether I accepted or excluded this evidence within this Decision.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support the Notice to end the tenancy?

Should the Notice be cancelled or enforced?

Background and Evidence

The written tenancy agreement shows a tenancy start date of February 27, 2021, for a monthly rent of \$1,650. The tenant said the tenancy began on March 1, 2021. Filed in evidence was the written tenancy agreement.

The rental unit is one of two suites located on the lower level, both of which are rented out by the landlord, who resides with his wife on the upper level.

Filed in evidence was the Notice. The Notice was dated July 28, 2022, for an effective move-out date of September 1, 2022. The tenants confirmed receipt of the Notice on July 28, 2022, when it was attached to the door.

Pursuant to Rule 6.6 and 7.18, the landlord proceeded first in the hearing to support the Notice.

The reasons listed on the Notice to end tenancy were:

- Tenant has allowed an unreasonable number of occupants in the rental unit.
- Tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.
- Tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- Tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk.

In the Details of Dispute section on the Notice, the landlord is instructed to "describe what, where and who caused the issue and include dates/times, names, etc. This information is required. An arbitrator may cancel the notice if details are not provided".

In this section, the landlord writes "See attached – 5 pages- Incidents" and See Attached – 1 page from former tenant (Personal detail/contact deleted)".

In support of the Notice, SS testified to the following. There has been a lot of coming and going in and out of the rental unit. The landlord has health issues and has trouble sleeping. When the tenants separated, there were a log of guys and girls coming into the rental unit and things went crazy. The tenants refused to talk to resolve the matters. The 4 issues in this dispute was with the tenants' dog barking and pooping outside and smoking inside. Another issue was that the tenants' parking has impeded the landlord's access to the driveway. On April 29, the other tenants in the adjoining suite moved out after 4 years due to the tenants' smoking marijuana. The final issue was the noise and music while they were sitting in their truck. This happens 3-4 times a week. The noise inside the suite was not all that bad.

SS confirmed that the tenants do not have parking on the residential property, but they park on the street.

Filed in evidence was the landlord's journal and a letter from the departing adjoining tenants.

Tenants' response –

In their application, the tenants wrote the following:

*Our landlord is trying to evict us because we have guests over from time to time. He has a list of days that we have had friends come and stay over in our home. He has told us we can not have friends over during the week, just on weekends. Has went out of his way to harass our guests when we are not with them, asking them if they are moving in, living here, how long they are staying, how and how long they've known us, when they are leaving. It's as tho we don't have any privacy in our home.*

[Reproduced as written]

The tenants testified to the following. The tenants have never been a couple and so they did not break up. The tenants are work colleagues and that is why they need two bedrooms. The issues arose because the landlord entered their rental unit without authority through the laundry common area, which caused them to lock the door to the rental unit. The landlord has accessed the rental unit on other times, without authority. The tenant has a 5 pound dog who does not go around barking and disturbing anyone. The dog is let out early in the morning when the tenant is getting ready for work and comes back on his own. He does not need to be on a leash. The tenant does not pick up after the dog as they leave by 5:30 am and do not return until 7:30 pm. The tenant would pick up after her dog if the landlord would just leave it for when they return.

Not one of their guests have ever parked in the landlord's driveway, except for the carpet cleaners once. The tenants only have street parking and sometimes she does sit in the truck when coming back from work and listens to music to de-stress, but never at unreasonable times. There are no unreasonable number of occupants as these are the same 2-3 people coming over to visit, as they are friends. The insulation in the home is poor as she can hear the landlord who lives above snore at night. The landlord has interrogated their friends/guests when on one occasion they stayed over. The landlord does not have the right to do so.

### Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

While I have reviewed the evidence submitted prior to the hearing and the oral evidence from the hearing, I refer to only the relevant evidence regarding the facts and issues in determining this Decision. Rule 7.17 states the arbitrator has the authority to determine the relevance, necessity, and appropriateness of evidence.

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons.

Where 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 that burden.

When reviewing the evidence of the landlord, I cannot find that the landlord submitted sufficient evidence to support their Notice. In reaching this conclusion, although the landlord submitted a 4-page journal with entries, the latest entry was April 12, 2022. The entry was "We saw same grey car parked outside". The other entries noted the comings and goings of the tenants' guests for 5 months, stopping in April 2022. The letter from the former tenants was dated April 29, 2022.

I find the delay in issuing a Notice to end the tenancy until July 28, 2022 fails to demonstrate that there was a significant interference, or unreasonable disturbance, or seriously jeopardizing the health and safety. The landlord I find submitted insufficient evidence to show a risk to the property by the tenants.

When reviewing the evidence, I find that the tenants engaged in everyday living, such as having guests over and playing music off-premises for a time after work, 14 hours a day, according to the tenant. The tenants are allowed to park on the public streets and as a

matter of fact, that is the only place they can park as the landlord has not provided parking on the property. The tenants are allowed to enjoy their home.

While there were some allegations about the tenants smoking inside the premises, I do not find the landlord provided any evidence of this, or that they took measures to correct the matter. That issue was not listed on the 1 Month Notice.

Certainly the tenants should pick up after their dog, but I do not find this rises to the level required in order to end the tenancy.

Overall, for all the above listed reasons, I find the landlords have submitted insufficient evidence to prove that on the day the Notice was issued, the landlord had cause to end this tenancy.

As a result, I find the landlord's One Month Notice to End Tenancy for Cause dated and issued on July 28, 2022, for an effective move out date of September 1, 2022, is not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.

I allow the tenants recovery of their filing fee of \$100. I grant them a one-time rent reduction of \$100 from their next or a future month's rent payment in satisfaction of their monetary award, notifying the landlord of when this deduction is being made. The landlord may not serve the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities when the tenants have made this deduction of \$100.

As I have found the landlord submitted insufficient evidence to support their Notice, I find it was not necessary to consider the tenants' digital evidence. I therefore excluded that evidence as the tenants failed to confirm with the landlord whether they could access the evidence.

*Information for the landlord –*

The landlord was unable to provide me the complete process of legally entering the rental unit under the Act. The tenants allege that the landlord has illegally entered their rental unit and the landlord has denied he did so. The tenants applied for authority to change the locks; however, that issue was dismissed with leave to reapply.

Without making a finding or issuing orders, I inform the landlord of section 29 of the Act, a landlord **may not** enter a tenant's rental unit without giving a proper written notice of entry to do so. Among other requirements, section 29(1)(b)(ii) of the Act requires that the notice of entry must be made at least 24 hours prior to the planned entry, contain the purpose for entering, which must be reasonable, and provide a **specific** time and date. (emphasis added)

Section 33 of the Act defines emergency repairs.

The landlord may wish to review the requirements of these two sections of the Act in the future.

The parties are reminded that under the Act, documents served by attaching it to the tenant's door are deemed to be delivered 3 days later and documents served by mail are deemed to be served 5 days later.

### Conclusion

The Notice issued by the landlord is cancelled and is of no force or effect due to the insufficient evidence of the landlord.

The tenancy has been ordered to continue until ended in accordance with the Act.

As the tenants' application was successful, and pursuant to section 72 of the Act, the tenants have been granted a one-time rent reduction of \$100 from a future month's rent.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 04, 2023

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Residential Tenancy Branch