



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

CNL FFT  
CNC, LRE, OLC, FFT

### Introduction

This hearing dealt with the tenant's applications pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fees for the two applications from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's applications for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenant's applications. As both parties confirmed receipt of each other's

evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

The tenant confirmed receipt of a 1 Month Notice to End Tenancy for Cause dated July 25, 2022, which was placed in the tenant's mail slot. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the 1 Month Notice on July 28, 2022, 3 days after service.

The landlord confirmed that they wished to cancel the 2 Month Notice to End Tenancy for Landlord's Use that was served on the tenant on October 22, 2022. The 2 Month Notice was therefore cancelled, and is of no force or effect. The hearing proceeded to deal with the remaining matters.

### **Issues**

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Is the tenant entitled to recover the filing fee for their applications from the landlord?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This month-to-month tenancy began in October 2012. Monthly rent is currently set at \$2,600.00, payable on the first of the month. The landlord still holds a security deposit of \$1,000.00 for this tenancy.

The landlord served the tenant with a 1 Month Notice to End Tenancy on the following grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
3. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord testified that they had served the tenant with a 1 Month Notice after an altercation that took place on July 8, 2022. The landlord submitted a detailed account of the incident that took place that day around 12:45 p.m. The landlord testified that they had attended the rental property to perform their routine lawn mowing, as well as to take photos of the back deck and stairs in order to hire a contractor to perform repairs. The landlord notes that the tenant has made repeated requests for repairs to the deck, as noted in the tenant's application for repairs filed on May 31, 2022, and the landlord was simply attended to commence the repair process by taking photos. A hearing was eventually held to deal with the tenant's application and the Arbitrator had ordered made several orders on October 14, 2022 as reproduced below:

*"In reading the emails exchanged between the parties, it is evident the parties are in dispute as to whether the landlord is required to give the tenant advance notice before inspecting the back deck.*

***Given the above, I issue the following orders to the parties to resolve this dispute:***

- 1. The landlord shall have the back deck, including the area beneath the deck, of the residential property inspected and commence necessary and appropriate repairs in a timely manner so that the back deck and area beneath the back deck is safe, healthy and in compliance with building standards.***
- 2. The tenant must not communicate or otherwise interfere with a contractor who attends the property for purposes of inspecting and/or repairing the deck and storage area.***
- 3. The tenant is responsible for moving any of her personal possessions out of the way should this be required to facilitate repairs.***
- 4. From this point forward, since the tenant may be required to move her personal possessions out of the way, the landlord must give the tenant at least 24 hours of advance notice before a scheduled inspection of the deck area and repair work is set to commence.***

*Having reviewed the materials before me, including three emails the tenant had sent the landlord in 2021, I find it is clear that the tenant has brought this matter to the landlord's attention on a number of occasions and the potentially unsafe and unhealthy condition of the back deck and storage area continued to be a matter that has not sufficiently addressed by the landlord when the tenant made her Application for Dispute Resolution in June 2022."*

The landlord testified that the two parties were on good terms until early June 2022 when the landlord listed the property for sale. The landlord testified that the tenant would try to interfere with the sale, and any of the landlord's duties such performing maintenance and repairs. The landlord testified that there was always an agreement that the landlord could attend the property to mow the lawn, and the tenant had left their rent in the microwave inside the rental unit in the past. In the tenant's own evidence, the tenant had sent an email on May 28, 2022 informing the landlord that they were "going to leave the receipt for the mold testing in the microwave with your rent minus the hydro and the receipt."

The landlord testified that the tenant would take issue with the landlord attending on the property, including the back deck. On July 8, 2022, the landlord had finished mowing the lawn, and was about to take photos when the tenant yelled at the landlord to get off the property, and that the landlord was required to give 24 hours written notice.

The landlord submits that they tried to explain why they were there when the tenant started screaming for help, and to get off the property. The landlord submits that the tenant had thrown a plastic watering jug at them, and also swung a heavy purse at their head, striking them multiple times.

The tenant's roommate heard the screams and attended the scene. The landlord testified that RV raised their right fist and cocked it as if to punch the landlord, and pushed at the landlord's shoulder as if to push them down the stairs. The landlord noted in their statement that they "stayed where I was standing on the stairs and told him I had the right as a landlord to be on the property. He then started throwing punches at me which I avoided by leaning my head back". The landlord submits that they were then shoved backwards, and fell down the stairs. The landlord continued to describe the incident, and which the landlord states involved RV charging down the stairs towards them, and attempting to further assault the landlord. The landlord submits that they had to keep RV down so RV could not get up and attacking the landlord further.

The landlord testified that the tenant and roommate followed them into the alley and continued to threaten the landlord. The landlord submits that they had called 911 to

report the assault after retrieving their cell phone, and also requested an ambulance, which was later cancelled by the landlord. The landlord notes that they attended a hand clinic on July 13, 2022 to deal with their injured finger. The landlord testified that the tenant has significantly interfered with their ability to perform their regular duties as a landlord, and could have just shut the door and stayed inside the house that date, but instead assaulted the landlord, causing injury to their hand. The landlord requests an Order of Possession.

The tenant testified that although the landlord did attend on July 8, 2022 to mow the lawn, the tenant believed that the landlord was there simply to harass the tenant. The tenant submits that the landlord was not taking any photos of the deck, and did not submit any in evidence to support that this was in fact the case. The tenant testified that they had a video of the incident, but was unable to submit it in evidence. The tenant testified that they did freak out as they felt that the landlord was on the stairs to their home, which the tenant considered to be private. The tenant testified that they had just served the landlord with their application for dispute in relation to the mould, and the landlord was intent on harassing and insulting the tenant. The tenant also notes that the landlord had acted strangely in the past, as noted by the email sent to the tenant prior to the tenant moving in.

The tenant denies assaulting the landlord in any way, and notes that RV only attended after RV heard the tenant screaming. The tenant testified that they observed both parties on the ground, and saw the landlord with RV's hair in the landlord's hands. The tenant submits that they were the one who had called the police, and not the landlord, as supported by the call log in evidence. The tenant also submitted the police incident number. Both parties confirmed that no charges were ever laid in relation to this incident.

The tenant noted several discrepancies in the landlord's testimony and submissions, including the fact that the tenant was the party who called the police, and the fact that the landlord did not submit any of the photos they said they were taking.

RV testified as a witness in this hearing, and testified that they were upstairs in their room when they heard the tenant screaming. RV testified that they were only wearing sweats, and no socks or shoes but attended quickly due to the screaming. RV testified that they heard the tenant telling the landlord to leave, and RV then stepped in between the parties. RV testified that they had put their hand up, and the landlord had stepped up into RV and attempted to go around RV. RV testified that they both fell down the stairs, and the landlord had grabbed RV by the hair. RV testified that the landlord was

belligerent and aggressive, and stated “this is my house”. RV agreed that the landlord did have a phone in their hands. RV denies threatening or punching the landlord.

The tenant requested orders for the landlord to comply with the Act and tenancy agreement, as well as an order restricting their ability to attend on the property.

### **Analysis**

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenant was deemed served with the 1 Month Notice on July 28, 2022, and filed their application on August 2, 2022. As the tenant filed their application within the required time period, the landlord has the burden of proving that they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

RTB Policy Guideline #32 speaks to the meaning of “Illegal Activity”, and what may constitute “illegal activity” and circumstances under which termination of the tenancy should be considered

### ***The Meaning of Illegal Activity and What Would Constitute an Illegal Activity***

*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.*

In consideration of the evidentiary materials and testimony before me, I am not satisfied that the landlord had met the burden of proof of establishing that the tenant, or a party allowed on the property by the tenant, and engaged in illegal activity. Although there was reference to an altercation that took place on July 8, 2022, which did involve a call

to the police, I do not find that the landlord had established that there was any criminal offence under the Criminal Code. For this reason, I am not satisfied that this tenancy should end on the grounds of illegal activity.

I will now consider whether the landlord has sufficient grounds to end the tenancy for the other reasons provided on the 1 Month Notice. It is undisputed that an incident did take place on July 8, 2022 which involved the three parties. In consideration of the evidence before me, however, I find that there is conflicting testimony as to what had taken place that day.

Although I agree with the landlord that the situation did escalate quickly, and that perhaps the incident would not have taken place if the tenant had simply entered the home and shut the door, the burden of proof still falls on the landlord to support that this tenancy should end on the grounds provided on the 1 Month Notice. In this case, I find that the evidence falls short.

I am not convinced that this incident was unprovoked. As noted by both parties, at the time of the altercation, both parties were already involved in a dispute that was before the residential tenancy branch, and which had yet to be heard at that time. I find that it is evident that prior to June 2022, both parties were on much friendlier terms, as supported by the tenant's suggestion on May 28, 2022 that the landlord retrieve the rent from the microwave. It is clear that the tenant had taken issue with the landlord's attendance on the property as they believed that the landlord was harassing them and acting in a belligerent manner. The tenant testified that this was the reason why they had panicked on July 8, 2022, and screamed for the landlord to get off the property. Although the tenant may not have been justified in this belief, the main question is whether the tenant, or their roommate, had significantly interfered with or disturbed the landlord, and whether the tenant or their roommate had seriously jeopardized the health or safety or lawful right of the landlord. In this case, in light of the conflicting testimony, and in the absence of corroborating witness testimony from an impartial party, or evidence such a video footage of the incident, I find the evidence falls short as to whether the tenant or roommate had truly assaulted the landlord, and if they did, whether this assault was in response to a larger altercation that took place between the parties.

Although I accept the landlord's testimony that they did attend the property to mow the lawn, and take photos of the deck, I am not convinced that they did not have ulterior motives to harass the tenant. As noted by the landlord, the tenant could have simply left and shut the door. On a similar note, the landlord could have chosen to leave the scene,

and either return later to finish the task, or designate a neutral party to do so. As noted in the landlord's own testimony, they had attempted to explain to the tenant why they were there. I find it highly reasonable and likely that the tenant was in a panicked state, and did not understand the purpose of why the landlord was on the back stairs. I find the both parties had an opportunity to deescalate the situation, but did not.

In light of the conflicting testimony between both parties, I am not satisfied that the landlord had established on a balance of probabilities that issues described can be attributed solely to the tenant or the roommate's behaviour, but rather due to interpersonal differences between the parties. I am not satisfied the landlord had provided sufficient evidence to support that this tenancy should end on the grounds provided on the 1 Month Notice. Accordingly, I am granting the tenant's application for cancellation of the 1 Month Notice. The 1 Month Notice dated July 25, 2022 is hereby cancelled, and the tenancy is to continue until ended in accordance with the *Act* and tenancy agreement.

Section 29 of the *Act* prohibits the landlord's right to enter the rental suite except with proper notice or the tenant's permission. The landlord's right to enter a rental unit is restricted, and the landlord must not enter unless:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;

- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

- (d) the landlord has an order of the director authorizing the entry;

- (e) the tenant has abandoned the rental unit;



(f) an emergency exists and the entry is necessary to protect life or property.

Residential Tenancy Policy Guideline #7 provides further clarification on the definition of “reasonable purpose” which includes:

- inspecting the premises for damage,
- carrying out repairs to the premises,
- showing the premises to prospective tenants, or
- showing the premises to prospective purchasers.

Section 28 of the Act states the following about the tenant’s right to quiet enjoyment:

**Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I note that several orders were already made by an Arbitrator on October 14, 2022 as noted earlier in this decision. Although I find that no further orders are required at this time, I remind the landlord of their obligations under sections 28 and 29 of the *Act*, as well as the previous order made on October 14, 2022.

I note that the tenant had to dispute two separate Notices to End Tenancy, which the tenant had to pay two separate filing fees for. As neither Notice to End Tenancy was upheld, I allow the tenant’s application to recover the filing fee for both applications.

**Conclusion**

The landlord withdrew their 2 Month Notice to End Tenancy served on October 22, 2022. This 2 Month Notice is cancelled and is of no force or effect.

The landlord's 1 Month Notice to End the Tenancy dated July 25, 2022 is cancelled and is of no continuing force or effect. This tenancy is to continue until ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$200.00 for recovery of the filing fees, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$200.00, and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court

The landlord is reminded of their obligations under sections 28 and 29 of the *Act*, as well as the previous order made on October 14, 2022.

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: January 09, 2023

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Residential Tenancy Branch