



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding EL GRECO APARTMENTS  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNC

### Introduction

This hearing was scheduled to deal with a tenant's application to cancel a One Month Notice to End Tenancy for Cause ("1 Month Notice").

Both parties appeared or were represented at the hearing. The landlord was represented by the building manager. Both parties were affirmed. Reference to "landlord" in this decision may reference the building owner or the building manager.

The hearing was held over two dates and an Interim Decision was issued on October 21, 2022. The Interim Decision should be read in conjunction with this final decision.

At the start of the reconvened hearing, I explored whether the tenant had seen the video that I had ordered the tenant to watch. The tenant confirmed that she watched the video without her son present, as ordered. The tenant confirmed that she did not ask the landlord to show the video to her son. Since the tenant has seen the video, I admitted it into evidence and gave the tenant the opportunity to respond to it.

Of note is the tenant had appeared with her son (referred to as "KL") at the first hearing, and he was excluded as a witness with instruction to wait to be called to testify. At the reconvened hearing KL was not present. The tenant stated KL had surgery and although she had expected him to be released the day before the reconvened hearing, he remained in the hospital. The tenant did not request an adjournment but near the end of the reconvened hearing the tenant suggested the hearing be held over until KL was available to testify. I noted that KL had provided written responses to the allegations against him and I informed the tenant that I would read his written statements and consider them in making my decision.

The parties were given an opportunity to try to resolve this matter by way of a mutual agreement, with a view to preserving the tenancy; however, the parties could not come to mutually agreeable terms. Accordingly, it is before me to decide whether the 1 Month Notice should be upheld or cancelled.

I was provided a considerable amount of evidence, in the form of oral testimony, documents, photographs, a video and written statements. All relevant evidence was carefully considered in reaching this decision. However, with a view to brevity I have summarized the parties' respective positions and evidence and only relevant oral and documentary evidence needed to resolve the issue(s) of this dispute, and to explain the decision, is referenced in this decision.

#### Issue(s) to be Decided

1. Should the 1 Month Notice be upheld or cancelled?
2. If the 1 Month Notice is upheld, is the landlord entitled to an Order of Possession? If so, when should the 1 Month Notice take effect?

#### Background and Evidence

The tenancy commenced on June 1, 2014. The tenant is currently required to pay rent of \$777.49 on the first day of every month. The rental unit was described as a one bedroom apartment located in a 45 unit building that is managed by the resident building manager appearing before me.

The tenant's adult son, referred to by initials KL, began living with the tenant in February 2022. The tenant's other son, referred to by initials SL, also lives in the apartment building, but in a different unit.

The subject 1 Month Notice was attached to the rental unit door on May 28, 2022 and has a stated effective date of June 30, 2022. The tenant failed to dispute the 1 Month Notice within the time limit for doing so.

The reasons for ending the tenancy, as indicated on the second page of the 1 Month Notice are as follows:

- Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
- 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

In the Details of Cause appearing on the 1 Month Notice, the landlord wrote:

*On March 30/2022 4:30 pm, I saw [KL] using [name of another tenant] bicycle that was in #2 parking stall in the north gated underground parking.*

*On May 07/ 2022 9:30 pm I opened the laundry room door located in the basement of the building, I saw [KL] naked holding lit cigarette and clothes all over the laundry room floor.*

*On May 08/2022 6:22 pm, again I saw [KL] with the possession of a stolen scooter that was parking in the north gated underground parking. Scooter went missing May 01/2022.*

*[Tenant] was given written warning and verbal warning.*

*[KL] knocking on my door, text me once, gave letter May 22/2022 2:10 pm.*

*[KL] still living in the building, disregard us intentionally.*

[Names omitted by me for privacy reasons]

### **Landlord's position**

The landlord submitted that after KL moved in with his mother in February 2022 there were break-ins and theft from vehicles and items stored in the underground parking garage. The landlord became vigilant in trying to gather evidence to demonstrate who was responsible for the thefts.

On March 30, 2022 the landlord saw KL riding a bicycle in the underground parking garage that belonged to a different tenant. The landlord asked this other tenant if she had lent her bicycle to someone and this other tenant responded that her bicycle was actually missing. KL brought the bicycle back on March 31, 2022 and the landlord instructed the other tenant to store her bicycle on the her balcony, which she did. The landlord pointed to a letter written by this other tenant in support of the landlord's position.

On May 7, 2022 the landlord walked into the common laundry room and found KL naked in the laundry room and smoking. The landlord left to go retrieve her cell phone and when she returned to the laundry room, the tenant and her son SL were there and

KL had his clothes on by then so the landlord did not call the police. When KL later approached the landlord about the incident, KL told her he had purchased drugs and he was not thinking properly.

On May 1, 2022 a motorized scooter belonging to another tenant went missing from the underground parking garage. On May 8, 2022 the landlord was driving in her car with another person when she saw KL on the scooter on a main road in the area. KL then turned down an alley while on the scooter and the landlord pursued KL. The landlord found KL sitting on the scooter at the side of the alley. In the video, KL is sitting on the scooter and has a helmet in his hands. The landlord can be heard accusing KL of stealing the scooter. KL repeatedly asked the landlord "from where?" to which the landlord states from the underground parking lot. KL then states he found the scooter in the alley.

The landlord phoned the tenant after seeing KL on the scooter and told the tenant they had to talk. The tenant responded that she would talk to the landlord later; however, the tenant did not talk to the landlord until three days later on May 11, 2022. As the tenant was talking to the landlord, KL was bringing the scooter back into the underground parking garage.

The landlord stated the ignition on the scooter has been ruined and the owner of the scooter has demanded to know who stole the scooter but the landlord has not revealed the information to protect the privacy of the tenant.

The landlord approached the tenant to inform the tenant that she would have to evict the tenant if she did not have KL removed from the property as the landlord has an obligation to protect the other tenants. The tenant refused to remove her son, claiming he has no where else to go. The landlord explained that she does not want to evict the tenant but she has no choice as the other occupants cannot continue to be subject to the thieving and unstable behaviour of KL.

The landlord submitted that since issuing the 1 Month Notice, KL's conduct has not improved. On August 29, 2022, KL was grinding metal on the tenant's balcony which sent sparks into a dry tree while there was an extreme fire hazard at the time.

On October 3, 2022, 911 was called by SL because KL was out of control and fighting with SL and throwing things off the tenant's balcony. The police came and escorted KL off the property. After the police left, KL returned to the property and the police were called again but by the time the police came KL had left. The police and the landlord

were looking throughout the residential property for KL up until 2 a.m., disturbing several other tenants in the building who complained to the landlord.

On November 30, 2022 KL appeared to be under the influence of a substance while in a common stairway, causing other tenants to be uncomfortable to use the stairway.

### **Tenant's responses**

With respect to KL riding another tenant's bicycle, the tenant stated KL explained to her that he has a similar bicycle and sometimes he parks his bicycle next to this other tenant's bicycle. The tenant had also stated previously that when KL moved in with her in February 2022 he only brought clothing. The tenant was not sure when KL got a bicycle but also stated he has had a number of bicycles.

In a written statement of September 4, 2022, KL wrote that he did not take another tenant's bicycle and that he has his own bicycle. KL thought this issue was "cleared up" since the other tenant had her bicycle returned by "whoever took it".

With respect to what occurred in the common laundry room, the tenant testified that her other son SL told the tenant that KL was in the laundry room dressed in a "Speedo". The tenant went down to the laundry room where she found KL dressed in a Speedo. The tenant told KL to put pants on and to go back to upstairs, the rental unit. KL proceeded to put on wet pants. The tenant acknowledged that KL appeared to be out of his right mind. The tenant finished doing KL's laundry between 9 and 10:30 p.m., approximately. The tenant stated that nobody else was around and she did not see KL smoking. The tenant testified that when she asked KL about the incident KL told the tenant he had smoked marijuana and it must have been laced with something.

In his written statement, KL acknowledged that he was doing laundry when his brother came into the laundry room. KL acknowledged that he had lit a cigarette but put it out and that the laundry room was left clean with the help of his mother. KL did not see any other tenants so this "mishap" did not bother anybody else.

With respect to the missing scooter, the tenant testified that on May 8, 2022 she was out for dinner with her son SL when the landlord called her, yelling that KL was on the scooter that had been stolen on May 1, 2022. The tenant stated that she would phone KL and ask him about the scooter. When the tenant called KL he denied knowing anything about the scooter missing from the property but stated he knew of a homeless man that was with a new looking scooter. KL looked at the scooter a little more and

determined it may be the missing scooter. The tenant asked KL to bring that scooter back to the property to make the landlord happy and it was when KL was pushing the scooter back to the building that the landlord saw KL with the scooter. As for KL turning down the alley way from the main road, the tenant stated that KL explained to her that he figured the landlord would accuse him of stealing the scooter so he turned down the alley way to avoid the landlord. The landlord's video only shows KL sitting on the scooter and the landlord yelling at him. KL could not get a word in edgewise to tell the landlord that the tenant had asked him to bring the scooter back to the property.

In his written statement, KL wrote that his mother contacted him on May 8, 2022 with respect to a missing scooter. KL knew of a scooter behind a dumpster nearby and it was not in running order so, to be a nice guy, he pushed it back toward the property. KL panicked when he saw the landlord on the main rain and turned down the alley way where he coasted the scooter down hill. KL returned the scooter the following day and KL was of the position the landlord ought to have thanked him for returning the scooter.

The tenant submitted that items have gone missing from the building, including her own items, and the landlord ought to have security installed a long time ago.

The tenant acknowledged that KL was sanding a metal bracket for a table on the balcony on August 29, 2022 but the tenant described the amount of sparks as being minimal and there is no tree in front of the balcony. The tenant acknowledged that she was nervous about KL sanding on the balcony and she asked KL to stop but KL only had a little bit left to do so he continued until it was done. The tenant described how the landlord came and was yelling about the metal sanding. KL also got made because KL has a temper. The tenant indicated that there is another tenant that has created sparks on his balcony and he does not appear to get in trouble with the landlord.

As for the incident in October 2022, the tenant acknowledged that her son SL called the police after there was a very bad physical fight between SL and KL; however, the tenant blamed SL for provoking KL. KL was out of control and began throwing his belongings over the balcony. The police arrived and tried calming KL down and her two sons made amends. The police did not indicate KL could not return to the apartment. KL called the tenant and told her he needed his pain medication, Dilaudid. The tenant believes KL does not react well to Dialudid and she told him not to take it anymore and she bought him over the counter pain relievers instead. Since then, everything has been peaceful.

The tenant submitted that the landlord is motivated to end the tenancy so that the rental unit can be re-rented for more money, which will benefit the manager as the manager

will get compensated for the increased rent. The tenant claimed that in July 2022, the manager's husband told the tenant to not worry about getting evicted and that she did not have to move out. Also, the manager's husband offered KL "magic mushrooms" to curb his drug addiction; however, the tenant claims KL is not a drug addict and he would not do magic mushrooms.

### **Landlord's responses**

The landlord responded that the scooter went missing on May 1, 2022 and the landlord called the tenant on May 8, 2022 after she had already seen KL on the stolen scooter. During the phone call with the tenant, the tenant said she would call the landlord back; however, the tenant did not talk to her again until May 11, 2022 when the tenant stated KL would be returning the scooter that coming Saturday; however, the landlord saw KL returning the scooter that same day, May 11, 2022 with the assistance of the tenant and SL.

The landlord does not discuss rental matters with her husband and it is impossible that her husband had discussions with the tenant about her tenancy.

The landlord is not motivated to end this tenancy for more rent. The landlord is an agent that works for the owner and she does not receive more compensation for increased rents. Rather, to end this tenancy and re-rent the unit is more work for her so the landlord is motivated to keep existing tenants; however, she cannot permit KL to continue disturbing the other tenants.

The landlord spent \$6000.00 on security system since May 2022 which is an expense that will not be recouped but the landlord felt she had to do this for the safety and protection of the other tenants.

The landlord also refuted that since October 3, 2022 everything has been peaceful. The landlord described KL as being under the influence of intoxicants while in the building stairwell in November 2022 and making other tenants uncomfortable to use the stairwell.

The landlord stated that she is willing to continue the tenancy if the tenant would remove KL from the unit; however, KL has refused to do so and has been complicit in condoning KL's actions.

Before the hearing ended, the tenant was given another opportunity to continue the tenancy if she would have KL removed from the unit in a very short amount of time; however, the tenant was not agreeable to having KL removed with anything less than 4 months of advance notice as KL has nowhere else to go.

### Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the notice. Where multiple reasons are indicated on the 1 Month Notice, it is sufficient to end the tenancy where only one reason is proven. The landlord's burden of proof is based on the balance of probabilities.

Every tenant is entitled to quiet enjoyment and the landlord is obligated to protect a tenant's right to quiet enjoyment pursuant to section 28 of the Act. Quiet enjoyment, as provided in section 28 of the Act includes:

#### **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.

Residential Tenancy Policy Guideline 6: *Right to Quiet Enjoyment* provides information and policy statements with respect to every tenant's right to quiet enjoyment and the landlord's obligation to protect it.

Where a landlord is aware that a tenant's right to quiet enjoyment has been breached by another tenant or occupant of the residential premises, the landlord is expected to take action, which may include eviction of the offending tenant. Accordingly, section 47 of the Act provides a mechanism for a landlord to bring a tenancy to an end where:



(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;

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

(i) has caused or is likely to cause damage to the landlord's property,

(ii) 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

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

The landlord indicated reasons on the 1 Month Notice that correspond to section 47(1)(d)(i) through (iii).

In the case before me, it is asserted by the landlord that the tenant's son KL, who has been permitted to occupy the rental unit by the tenant, has significantly disturbed other tenants or occupants of the property by stealing property belonging to other tenants that is in the common underground parking garage and acting in an unreasonably disturbing way (naked and smoking while under the influence of an intoxicant) in the common laundry room. The landlord has further put forth that despite serving the tenant with an eviction notice, the disturbing behaviour of KL continued, including grinding metal on the balcony, throwing items off the balcony, and being under the influence of an intoxicant in the common stairwell.

Given every tenant's right to freedom from significant interference to use and enjoy common areas, and the landlord's obligation to protect the tenants' right to this freedom, I accept that the above described alleged conduct is grounds to end the tenancy if KL has conducted himself as described by the landlord.

The tenant and KL acknowledged some of the conduct described by the landlord but for the most part they denied the allegations of stealing, harming other tenants, and attempted to justify some of KL's behaviour to a bad reaction to a prescribed drug.

The landlord has not indicated on the 1 Month Notice that KL's conduct or activities are illegal and, as such, there is no requirement for the landlord to prove illegality. Considering the allegations before me, I find that I must determine whether the landlord has sufficiently demonstrated, on a balance of probabilities, that the conduct of KL has significantly interfered with or unreasonably disturbed other occupants or the landlord; and/or seriously jeopardizing a lawful right or interest of the landlord or another occupant.

It is important to note that the standard of proof is the civil standard of: on the balance of probabilities. This standard of proof is much less than the criminal standard of: beyond a reasonable doubt.

In hearing from the landlord and tenant, and in reading the statements of KL, I find the landlord's version of events as being more likely than that of the tenant and KL.

I make this finding considering the following factors:

1. The tenant testified that KL came to live with her as he had nowhere else to go and he came with only his clothes. Yet, when he was found to be riding a bicycle in the garage he explained to the tenant that he has one just like it, implying he must have taken the other tenant's bicycle by accident. When I asked when KL obtained a bicycle, the tenant responded that KL has had many bicycles, and I find this is inconsistent with her earlier testimony that KL came to live with her with only his clothing. I also find the tenant's statements to be inconsistent with KL's written statement which implies he was not even riding another tenant's bicycle. I find it unlikely that a person who is without many possessions and without the means to support himself would acquire several bicycles, including one that looked just like the missing bicycle that belongs to another tenant in the building. Therefore, I find it more likely than not that KL took a bicycle belonging to another tenant, as described by the landlord, and I find this is significant interference with another occupant's right to use of the common areas to store their bicycle.
2. The landlord described seeing KL naked, appearing to be under the influence of drugs, and smoking in the common laundry room. The tenant acknowledged that KL appeared to be not in his right but pointed out KL was not entirely naked since he was wearing a "speedo" when she came to the laundry room. I also heard from the tenant that she became aware of the incident in the laundry room because her other son came to tell her. Yet, KL only acknowledged smoking a cigarette in his written statement and described it as a "mishap". I find it more

likely that this was much more than a minor “mishap” since KL’s behaviour was such that it caused the tenant’s other son, SL, to come and get the tenant to deal with KL and the tenant’s own admittance that KL was not in his right mind when she found him. The tenant and KL describe seeing nobody else except their family; however, the building manager saw KL and she is also an occupant of the residential property. I accept that any occupant, including the building manager, walking into a room where a man is naked, or near naked, in a mind-altered state, smoking and with clothes scattered on the floor would be disturbed and likely feel too uncomfortable to use the common laundry room. Thus, I accept that KL unreasonably disturbed other occupants of the building, including the building manager.

3. As for the KL’s possession of a motor scooter stolen from the garage, I find KL’s reaction to the landlord when she caught him on the scooter is inconsistent with the tenant’s and KL’s explanation that KL had only found the stolen scooter and was returning it to the residential property as a favour to his mother and the landlord. In the video, the landlord accuses KL of stealing the scooter and he repeatedly asks her “from where?” He does not explain that his mother had asked him to return it. Nor, was I provided any explanation for KL to have a helmet with him if he had just found it in the alley as he claimed. The tenant explained she asked KL to return the scooter to the property and then the landlord saw KL with the scooter; however, I find it much more logical that the landlord had called the tenant after she already saw KL with the scooter, as the landlord testified. Therefore, I find the landlord’s assertion that KL was responsible for the stolen motor scooter to be more likely than KL finding the stolen scooter off the property and was merely returning it as a favour. As stated previously, stealing another occupant’s property from the garage constitutes significant interference with another occupant’s right to use the common area of the building to store or park their scooter.

Also of consideration is that even after issuing the 1 Month Notice to the tenant, KL has continued to unreasonably disturb other occupants by:

4. Grinding metal on the balcony, scattering sparks during a drought, and did not stop despite the tenant asking him to do on August 29, 2022.
5. Fighting with his brother and throwing his possessions off the balcony, resulting in the police being called; and, then eluding police when they were called back to the property, resulting in a late night/early morning search for him on the property on October 3 and 4, 2022.

It is clear to me that KL has little to no regard for the other occupants' right to quiet enjoyment of the property. The tenant appears unable or unwilling to recognize KL's conduct for what it is and the offensive conduct of KL did not stop despite his mother receiving a 1 Month Notice.

While the tenant alleged the building manager is motivated to end this tenancy for financial gain, there is no evidence to support that and I find it speculative at best. The manager also refuted that her compensation is based on the amount of rent charged for a rental unit. The building manager's explanation that ending this tenancy will actually cause her more work and she has no motivation other than to protect the other occupants from KL's conduct makes sense to me.

In light of the above, I find the landlord has satisfied me that there is no alternative but to end the tenancy since the tenant has refused to remove KL from the rental unit. Therefore, I uphold the 1 Month Notice and I dismiss the tenant's application.

Section 55(1) of the Act provides as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I have upheld the 1 Month Notice and I dismiss the tenant's application to cancel it. Upon review of the 1 Month Notice provided to me, I am satisfied that it meets the form and content requirements of section 52 of the Act. Accordingly, I find the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession.

With this decision I provide the landlord with an Order of Possession effective at 1:00 p.m. on January 31, 2023. Given the serious and repeated disturbance and interference to other occupants, I find it unreasonable to make the landlord and the other occupants wait any longer to regain their quiet enjoyment of the building. Considering the tenant is older and has lived in the rental unit several years, I also have given the tenant the benefit of having weeks to vacate rather than mere days.

Conclusion

The 1 Month Notice is upheld and the tenant's application is dismissed.

The landlord is provided an Order of Possession effective January 31, 2023 pursuant to section 55(1) of 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: January 11, 2023

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Residential Tenancy Branch