



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

## DECISION

**Dispute Codes**      CNC

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for the cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47.

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

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution package and supporting documentary evidence. The landlord testified, and the tenant confirmed, that the landlord served the tenant with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

### **Issues to be Decided**

Is the tenant entitled to an order cancelling the Notice?

If not, is the landlord entitled to an order of possession?

### **Background and Evidence**

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

The parties entered into a tenancy agreement starting July 1, 2017. Monthly rent is \$985 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$475, which the landlord continues to hold in trust for the tenant.

The rental unit located on the upper level of a two-level "four-plex".

On October 2, 2022 the landlord served the tenant with the Notice. The Notice specified an effective date of November 30, 2022 and it listed the reason for ending the tenancy as "tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord".

The Notice listed the details of the cause for ending the tenancy as:

September 28, 2022 – called RCMP on tenant of adjacent unit for moving an old box spring off of lawn so that shared front lawn could be moved

September 29, 2022 – dressed all in black (hoodie and full face covering) to sneak onto neighbors property and harass

October 1, 2022 – let dog out of unit off leash while landlord was working in another unit. Accused landlord of improper notice then preceded to send dozens of texts over the evening.

The tenant disputed the Notice on October 2, 2022.

The landlord testified that the tenant and one of the other occupants of the residential property did not get along. He stated that things came to a head on September 28, 2022 when the tenant called the RCMP on the other occupant for moving a box spring and garbage without his permission. He testified that an RCMP officer attended the rental unit and later conveyed his annoyance to the landlord indicating that he had received a number of other calls from the tenant all of which were nuisance calls. He did not submit any documentary evidence relating to other calls to the RCMP.

The tenant testified that his neighbor's mother picked up a box spring that he had left on the lawn of the residential property and threw it on the hood of his truck. He then left the rental unit took the box spring off of his truck and put it back on the lawn, whereafter the neighbor's mother threw it back on the truck a second time. He denies that his calling the RCMP amounted to a nuisance and asserted it was for a legitimate reason.

The landlord also testified that the following day (September 29, 2022) his neighbour reported to him that the tenant was on "their property" and dressed all in black.

The tenant testified that he may have been dressed in a black-hooded sweatshirt on September 29, 2022 but it was not for the purposes "sneaking", it was just what he regularly wears. He testified that he did cut across the portion of the front yard of the residential property (which another tenant has exclusive use of) on the way to walking to the sidewalk. He denied that he had any improper intent when so doing.

The landlord testified that he attended another unit located in the residential property on October 1, 2022 to make some repairs. While he was doing this, the door to the other unit was open and he could be seen from outside. He testified that the tenant came out of the rental unit with his dog, and that the dog was not on a leash. The dog barked at him and he asked the tenant to secure his dog. The tenant took his dog and put it in a fenced-off area of the backyard. The landlord stated that, at the time, he believed that this entire incident was a non-issue.

However, he testified that over the course of that evening and the next morning, the tenant “went on a tirade” and sent him over 144 text messages between 5:00 pm and 8:30 am. At first, the landlord responded to the tenants messages, and the discussion became tense. The tenant implied that the landlord sides with his neighbor rather than him in their disputes for racially motivated reasons. The landlord replied “I’m not even responding to your ridiculous allegations. I’m done. Please stop texting now. Thank you.” The tenant continued to text him and again the landlord asked him to stop texting. The tenant continued texting the landlord, making allegations about his neighbors and alleged racism. The landlord submitted copies of these text messages into evidence.

The landlord testified that this not the first time the tenant inundated him or his wife with text messages, but that this particular incident was “the straw that broke the camel’s back”. The landlord did not provide any copies of other text messages the tenant sent him or his wife.

The tenant admitted to sending the text messages and testified that he had a “nervous breakdown”, as his neighbors had called the RCMP on him the day prior for no discernible reason. He claimed that his neighbors are gaslighting him and trying to get him to move. They engage in passive aggressive behavior including exiting their units whenever he does walking in the driveway and circling his vehicle while he takes the garbage out. On one instance, they allowed their children to sit on his truck.

The tenant apologized for sending text messages on October 1, 2022 and acknowledged he was wrong to do so, but denied that he had previously treated the landlord or his wife in a disrespectful manner.

## **Analysis**

Section 47(1) of the Act, in part, states:

### **Landlord's notice: cause**

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,

Rule of Procedure 6.6 states:

## **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, the landlord bears the evidentiary burden to prove it is more likely than not that the tenant unreasonably disturbed him or other occupants of the residential property.

Based on the testimony of the parties, the documentary evidence presented at the hearing, I do not find that the landlord has proven this.

I must first note that my analysis is restricted to the three incidents set out on the Notice. There is no documentary evidence supporting landlords allegations of previous calls by the tenant to the RCMP or previous text message exchanges with him or his wife. Additionally, as these incidents were not set out on the Notice, they cannot form the basis for the Notice being issued.

I am not persuaded that the tenant calling the RCMP on his neighbor on September 28, 2022 amounts to an unreasonable disturbance of that neighbour. The only first-hand evidence I have with regard to what occurred that day is that of the tenant. The tenant's evidence is that his neighbor potentially damaged his vehicle on more than one occasion. I do not find it unreasonable for the tenant to have called the RCMP in this circumstance in order to prevent future damage to his vehicle.

Similarly, I only have the tenant's first-hand account as to what occurred on September 29, 2022. His explanation is entirely innocent and while he might not have been entitled to walk across his neighbor's lawn, I do not find that in so doing he unreasonably disturbed his neighbor. Similarly, I do not find the fact that he was wearing black attire to be an unreasonable disturbance. No evidence was present at the hearing that persuades me to find the tenant had any ill-motive when crossing the lawn on September 29, 2022.

I accept that the tenant sent over 100 text messages throughout the evening and overnight to the landlord, despite the landlord repeatedly asking him to stop texting. These text messages undoubtedly disturbed the landlord. However, I do not find that similar incidents had occurred before. Based on the evidence presented to me, this appears to have been an isolated incident. Without documentary corroboration of the landlord's claim that the tenant repeatedly sent text message of the nature and in the volume of those he sent on October 1, 2022, I do not find that the landlord establish that it is mor likely than not that the tenant did this.

I do not find that the incident on October 1, 2022, in isolation, amounts to an unreasonable disturbance which warrants ending a tenancy. I note that, should similar occurrences take place in the future, taken together, they could be grounds for ending the tenancy.

Accordingly, I find that the Notice is invalid and of no force or effect. The tenancy shall continue.

I caution the tenant against sending such text messages to the landlord in the future. He has come perilously close to having his tenancy ended.

### **Conclusion**

I grant the tenant's application. The Notice is cancelled and of no force or effect. The tenancy shall continue.

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: February 15, 2023

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Residential Tenancy Branch