



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"), seeking to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice").

The parties appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled?

### Background and Evidence

This month to month tenancy began on October 1, 2010, monthly rent is \$750.00 and the tenant paid a security deposit of \$325.00 at the beginning of the tenancy.

The amount of security deposit listed on the tenancy agreement to be paid by the tenant was \$375.00.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlords proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause. The Notice was dated April 18, 2012, was delivered via personal delivery on that date, listing an effective end of tenancy on May 31, 2012.

The causes as stated on the Notice alleged that the tenant has not paid the security deposit within 30 days as required by the tenancy agreement, is repeatedly late in paying rent, has caused extraordinary damage to the rental unit, and has not done required repairs of damage to the rental unit.

The landlords' relevant evidence included photos of the rental unit taken in mid April 2012, the tenancy agreement, an agreement with the tenant that she would be given a rent reduction at the beginning of the tenancy in exchange for work performed on the rental unit, the Notice, a listing of repair requests from the tenant to the landlords dated April 17, 2012, an email response from the landlords, dated May 2, 2012, a receipt for the February 2012 rent and a move in condition inspection report.

In support of their Notice, the landlord testified the tenant has made at least 6 late payments of rent since the tenancy began and has not paid the agreed upon full amount of security deposit, falling short by \$50.00.

As to the alleged damages, the landlords submitted that the tenant broke a window in the rental unit and has not replaced it. The landlords submitted a photo of the window.

Additionally, the landlords stated that the tenant has put holes in the drywall and has not repaired them. The landlords stated that the cupboard and cabinet doors in the kitchen and bathroom have fallen off and have not been reattached by the tenant. The landlords also stated that the tenant has not completed the painting as agreed upon at the beginning of the tenancy, for which she received a reduction in rent.

The landlords also pointed to their photo of the back yard to substantiate that the tenant has not cleaned up the garbage in the yard.

In response, the tenant stated that she was late paying rent on some occasions, but that she had an agreement with the landlords that she could pay rent in two monthly instalments. The tenant also submitted that she has not been late since she started receiving income assistance. As to the issue of a late payment in April, the tenant stated that the landlords often leave town for several months at the time, and as she pays her rent in cash, she could not contact the landlords' agent for prompt payment, as he was unavailable.

The tenant stated that the window was broken as there is no lock on the window, and she attempted to secure the window with a broomstick for safety reasons, which inadvertently cracked the window.

As to one of the holes in the drywall, the tenant stated that this has occurred due to the door not have a rubber stopper, which meant that the door knob has made an indentation in the drywall. The tenant stated she mentioned this to the landlords, but that the rubber stopper was not installed. The tenant stated that the other hole in the drywall, as can be seen by the photo, was repaired, and is ready for painting.

The tenant stated that there was a hole put into the door by her ex-boyfriend, which is why he no longer lives in the rental unit. The tenant submitted that she has repaired the door.

The tenant also stated that the cabinet and cupboard doors have come off due to the faulty hardware and age of the units. The tenant submitted that she understood it was a landlord's responsibility to make those type repairs to a rental unit. Additionally, the tenant stated that the hardware provided to her by the landlords for the repair was not the proper hardware.

As to the closet door, the tenant stated that the door has just come off the hinges, and that it is standing inside the closet as she did not want to re-hang them as they were in the way. The tenant submitted that they are not damaged, just not re-hung.

The tenant stated that the drawer has been repaired.

As to the marks on the wall, the tenant stated that her young daughter likes to draw on the walls, but that she has cleaned off the marks now.

As to the broken toilet handle, the tenant stated that it just fell off, as it was a cheap, plastic handle, which would cost \$2.00 to replace.

As to the incomplete painting, the tenant stated that it has not been finished as she got pregnant, but that she intends to do so.

As to the unattached light fixture, the tenant stated that it came down when the landlord's plumber was working on the bathroom directly above the fixture. The tenant stated she could reattach the fixture if given the proper hardware.

As to the garbage in the yard, the tenant stated that it was her spring cleaning, which has now been cleared.

The tenant also stated that the landlords attended the rental unit after she issued a list of repair requests, and directly thereafter was given the Notice, with no other indication of a deadline or concerns.

In response to the tenant's submissions, the landlords were queried. The landlords stated that the cabinets and cupboards were original to the home, which is at least 30 years of age, as was the painting, toilet and window. The landlords acknowledged that the broken window did not have a lock, but argued that the tenant should have used a cut off stick which fit the frame. The landlords acknowledged not having supplied the tenant with a properly measured and cut stick.

The landlords agreed that the rental unit needed painting as shown on the condition inspection report, which is why the tenant was given a rent reduction.

The landlords agreed that they are away on trips lasting three to four months.

### Analysis

Based on the foregoing testimony and evidence, and on a balance of probabilities, I find as follows:

Once the tenant made a timely application to dispute the Notice, the landlords became responsible to prove the Notice to End Tenancy is valid.

In this instance, the burden of proof is on the landlords to prove the tenant is repeatedly late in paying rent, has caused extraordinary damage to the rental unit, has not done required repairs of damage to the rental unit or has not paid the security deposit within 30 days as required by the tenancy agreement.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to prove the causes listed on the Notice.

In reaching this conclusion, a review of the tenancy agreement shows that there is no date listed on which the tenant was to have paid her security deposit. Additionally, even had there been a date listed, I find the landlords unreasonably delayed in seeking to end the tenancy for this reason. I therefore find the landlords failed to prove that the tenant has not paid the security deposit within 30 days of the date required in the tenancy agreement.

As to repeated late payments, I find the landlords submitted insufficient evidence to support this cause. In reaching this conclusion, I find no receipts, other than the one for February 2012, and accounting records and I also find that the parties had an agreement that the rent would not be paid in full on the first day of the month. I also accept the testimony of the tenant that she attempted to pay her rent in April, but was unsuccessful in locating the landlords or the landlords' agent while they were away. I therefore find the landlords failed to prove that the tenant has made repeated late payments.

As to the remaining listed causes, I find the landlords submitted insufficient evidence to support that the tenant caused extraordinary damage to the rental unit or has not done required repairs of damage.

The landlords confirmed that the painting, fixtures, cupboards, cabinets, windows, plumbing fixtures and light fixtures were original to the home, which was at least 30 years of age. According the Residential Tenancy Branch Policy Guideline 40, all these items had reached and surpassed their useful life.

The condition inspection report and the parties agreed that the rental unit required painting when the tenant started the tenancy; therefore I cannot consider that unfinished painting is damage caused by the tenant.

I find that the cabinets and cupboards appeared to have suffered through natural deterioration, and was the responsibility of the landlord to make those repairs. I can find no responsibility on the part of the tenant that caused the doors to fall off.

As to the window, although the tenant agreed that she cracked the window, I find it reasonable that the tenant wanted to secure the rental unit and that the landlords failed to ensure that the window had a lock or that the tenant was given a properly measured stick to secure the window. I do not find this to be extraordinary damage.

I also find that the tenant was not responsible for the hole in the drywall in back of the door, as I find the landlords failed to provide adequate measures against damage by installing a door stopper. As well, I find the other hole in the drywall was repaired, with only a coat of paint needed.

I also find it reasonable that the handle on a toilet of that age would fall off due to reasonable wear and tear. I do not find this to be extraordinary damage.

I find the closet door is not damaged, as the photo depicts that it is standing upright on the closet shelf, ready for reinstallation. I do not find it unreasonable that the tenant did not want the door in place for her own purposes.

As to the light fixture, I find that the landlords failed to prove that the tenant caused the light fixture to be suspended from the ceiling.

I do not find that the presence of the garbage on the date the Notice was issued to be extraordinary damage.

Due to the above, I therefore find that the landlords have submitted insufficient proof to prove the causes listed on the Notice.

### Conclusion

As a result, I find the landlords' 1 Month Notice to End Tenancy for Cause, issued April 18, 2012, for an effective move out date of May 31, 2012, is not valid and 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.**

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: May 22, 2012.

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Residential Tenancy Branch