



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KENMARK INVESTMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes CNC, OLC, FF

### Introduction

This hearing dealt with a tenant's amended application to cancel a 1 Month Notice to End Tenancy for Cause and orders for compliance. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

I amended the Application to identify the landlord as indicated on the tenancy agreement and Notice to End Tenancy.

With respect to orders for compliance, the tenant submitted that the landlord failed to give the tenants possession of another unit in the building despite giving the landlord a cheque for the security deposit and purchasing paint for the other unit, for which the tenant was later reimbursed. As the Application before me indicates the tenants' current residence is the rental unit that is the subject of this dispute I informed the parties that I would deal with the 1 Month Notice issued with respect to their current residence but that any other remedies related to a different unit would have to be the subject of a separate Application for Dispute Resolution.

### Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?

### Background and Evidence

The tenancy started on June 10, 2013 and the tenants are required to pay rent on the 1<sup>st</sup> day of every month. The rental unit is a one-bedroom apartment. The tenancy agreement provides that the two named tenants are to occupy the rental unit. Provisions for additional occupants are provided in clauses 6 and 13 of the tenancy agreement. Clause 6 provides that the tenant agrees to pay additional rent of \$30.00 per month for each additional occupant. Clause 13 provides that a tenant must request the landlord's permission to have an additional occupant and failure to obtain this is a breach of a material term. Clause 13 also provides that a person

residing in the rental unit in excess of 14 days in a calendar year will be considered to be occupying the rental unit contrary to the agreement.

It was undisputed that the tenants had their niece staying with them in the rental unit starting in mid-July 2014 and she left in the third week of September 2014. It was undisputed that on July 27, 2014 the landlord gave the tenants a breach letter. The breach letter indicates the tenants are in violation of clause 13 of their tenancy agreement and that they have 5 days to correct the breach by removing the additional occupant from the rental unit. The tenants filed the original Application after receiving the breach letter. It was also undisputed that the landlord issued a 1 Month Notice to End Tenancy for Cause on August 29, 2014 due to failure to correct the breach within a reasonable amount of time after written notice to do so. The tenants then amended their Application to request cancellation of the 1 Month Notice.

The tenants submitted that they viewed a two-bedroom unit in the building and on July 8, 2014 they gave the landlord a cheque for a security deposit for the two-bedroom unit so that they could have an additional occupant. The tenants also purchased paint for the two-bedroom unit for which the landlord reimbursed them. The tenants anticipated that they would be permitted occupancy of the two-bedroom unit as of August 1, 2014. In mid-July 2014 the tenants' niece came to town for purposes of completing job training as a painter over the summer months. The tenants requested permission for their niece to be an additional occupant and the landlord responded by indicating a credit check would be made upon completion of certain paperwork. However, rather than receiving the anticipated paperwork from the landlord the landlord served them with the breach letter. The tenants filed the Application for Dispute Resolution on July 28, 2014 to deal with the breach letter and after serving the landlord with the hearing documents the landlord informed the tenants that they would not be getting possession of the two-bedroom unit. The tenants requested return of the security deposit cheque for the two-bedroom unit but the landlord refused to return the cheque. Subsequently, on August 29, 2014 the landlord issued the 1 Month Notice to End Tenancy for Cause indicating the tenants failed to correct a breach of a material term within a reasonable amount of time after written notice to do so. The tenant amended their Application after receiving the 1 Month Notice to End Tenancy for Cause and in the third week of September 2014 the tenants' niece left the rental unit.

The landlord submitted that the tenants had other family members stay with them on previous occasions but their stays were for shorter periods of time and the landlord did not give the tenants a breach letter. The landlord pointed out that the tenants cannot continue to permit additional occupants to move into the rental unit without getting permission from the landlord, as provided in the tenancy agreement. The landlord was also of the position that the tenants had made copies of keys for the unit and the building to give to their niece and that to do so is contrary to the tenancy agreement. The landlord also indicated there were issues with the niece's conduct while she was residing at the property and that the tenants' niece was creating a mess in the common areas by cleaning painting supplies in the common areas.

The landlord acknowledged collecting a cheque for the security deposit for the two-bedroom unit and the landlord acknowledged that the cheque is still in the landlord's possession. However, the landlord explained that they have not cashed the cheque and will not be doing so. The landlord also acknowledged that the tenants viewed the two-bedroom unit and purchased paint for it and that after receiving a receipt for the paint purchase the landlord did reimburse the tenants for that expenditure.

The tenants also made the argument that the tenants' niece was not an occupant but a guest and that the landlord cannot place limits on guests or charge the tenants additional rent for over-night guests under the Act.

Both parties agreed that the landlord did not require or collect any additional rent from the tenants while their niece was staying with them.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

Although the landlord attempted to introduce evidence concerning the behaviour or conduct of the tenants or the tenant's niece, the Notice to End Tenancy issued by the landlord pertained to breach of one specific term of the tenancy agreement and I have only considered that term and the alleged breach of the term in making this decision.

Where a tenant is in breach of a material term of their tenancy agreement, the landlord may end the tenancy for cause under section 47(1)(h) if the tenant does not correct the breach within a reasonable amount after receiving written notice of the breach.

Including the word "reasonable" in the legislation is intentional and its use is intended to take the circumstances of the situation into consideration.

Although the tenants' niece continued to occupy the rental unit for several weeks after the tenants were served with the breach letter, I find the circumstances in this case are quite unique and warrant consideration, as follows. The tenants were given a breach letter on July 27, 2014 indicating they had five days to correct the breach. However, the tenants had a very reasonable expectation that they would commence a new tenancy in the larger two-bedroom unit on August 1, 2014. I find that they had this reasonable expectation since, under the Act, a landlord may not collect a security deposit unless a tenancy has formed or as a condition of entering into a tenancy. Also of consideration is that they purchased paint for the larger unit with the landlord's agreement for which they were subsequently reimbursed. Thus, in my view, had the landlord given the tenants been given possession of the larger two-bedroom unit as they reasonably expected, the tenants would have corrected the alleged breach of their current tenancy

agreement by the time limit specified in the breach letter and would not be facing eviction from their current residence. Therefore, I find the landlords actions not only conflicting and confusing but such that, I find, contributed to the dispute at hand.

Given the fact the tenants' niece has since vacated the rental unit and in consideration of the unique circumstances described above, I am satisfied the tenants have corrected the breach within a reasonable amount of time. Therefore, I cancel the Notice to End Tenancy issued on August 29, 2014 with the effect that this tenancy shall continue until such time it legally ends.

As the tenants were successful in this Application, I award the tenants recovery of the filing fee paid for their Application. The tenants are authorized to deduct \$50.00 from rent otherwise payable to the landlord in satisfaction of this award.

### Conclusion

The 1 Month Notice to End tenancy for Cause issued on August 29, 2014 is cancelled with the effect that this tenancy continued until such time it legally ends. The tenants are awarded recovery of the filing fee they paid for this Application and the tenants are authorized to deduct \$50.00 from rent otherwise payable to the landlord in satisfaction of this award.

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: October 07, 2014

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Residential Tenancy Branch

