



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the "Act"), to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice"), issued on January 21, 2015 and to recover the filing fee from the landlord.

The tenants attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenants testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on January 30, 2015, a Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlord has been duly served in accordance with the Act.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

### Issues to be Decided

Should the Notice be cancelled?

Are the tenants entitled to recover the filing fee from the landlord?

### Background and Evidence

The tenants submitted as evidence a Notice that they received from the landlord. The reasons stated in the Notice is the tenant has engaged in illegal activity that has, or is

likely to damage the property, the tenant has caused extraordinary damage to the unit or property, and the tenant has not done required repairs of damage to the unit.

### Analysis

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

This matter was set for hearing by telephone conference call at 9:00 A.M. on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time were the tenants.

Since the landlord did not attend the hearing by 9:10 A.M to present any evidence or submission in support of the Notice, and the burden is on the landlord to prove the Notice was issued for the reasons stated. I find that the landlord has failed to meet the requirements. Therefore, I grant the tenants' application to cancel the Notice issued on January 21, 2015, and the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the Act.

As the tenants were successful with their application, the tenants are entitled to recover the filing fee from the landlord. Therefore, I authorize the tenants to a onetime rent deduct of \$50.00 from a future month rent payable to the landlord to satisfy this award.

### Conclusion

The tenants' application to cancel the Notice is granted. The tenancy will continue until legally ended in accordance with the Act.

The tenants are authorized a onetime rent reduction of \$50.00 from a further month rent payable to the landlord to recover the cost of the filing fee from the landlord.

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 23, 2015

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Residential Tenancy Branch

