



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: CNC, FF

### Introduction

This hearing was scheduled in response to an application by the tenants for cancellation of a notice to end tenancy for cause / in addition to recovery of the filing fee. Both parties attended and / or were represented and gave affirmed testimony.

### Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from April 01, 2013 to March 31, 2015. The agreement provides that at the end of the fixed term, "the tenancy may continue on a month-to-month basis or another fixed length of time." In the circumstances of this tenancy, following the end of the fixed term the tenancy has continued on a month-to-month basis. Monthly rent is due and payable in advance on the first day of each month. By way of mutual agreement, rent of \$1,300.00 was increased to \$1,340.00 effective from April 01, 2015. A security deposit of \$650.00 was collected at the start of tenancy.

Pursuant to section 47 of the Act which addresses **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy dated May 19, 2015. The notice was personally served on that same date. A copy of the notice is in evidence. The date shown on the notice by when the tenants must vacate the unit is June 30, 2015. The reason identified on the notice in support of its issuance is as follows:

Tenant has engaged in illegal activity that has, or is likely to:

- jeopardize a lawful right or interest of another occupant or the landlord

The tenants filed an application to dispute the notice on May 20, 2015.

It is understood that the landlord wishes to sell the property, and that he had previously engaged the services of a realtor for that purpose. It is further understood that there was an occasion when the realtor was unable to show the unit to prospective buyers, as his preferred time was not suitable to the tenants. For their part, the tenants indicated that while Sunday afternoons are the best times for them, the Sunday occasion at issue was Mother's Day, and was not agreeable to them. The landlord claims that it was as a result of the realtor's inability to

show the unit on that day, that the realtor released the landlord from the terms and conditions of the listing contract. It was apparently on this basis that the landlord then issued the 1 month notice to end tenancy for cause.

### Analysis

Section 47 of the Act provides in part as follows:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

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

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

Based on the documentary evidence and testimony, I find that the landlord has failed to meet the burden of proving that the tenants have engaged in illegal activity that “has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.” Specifically, I find that the existence of one occasion when the landlord’s previous realtor and the tenants were unable to agree on a mutually agreeable time to show the unit to prospective buyers, is not sufficient to establish cause for the landlord to end tenancy on the grounds identified. Accordingly, the 1 month notice is hereby set aside, and the tenancy presently continues in full force and effect.

Going forward, the attention of the parties is drawn to section 28 of the Act which addresses **Protection of tenant’s right to quiet enjoyment**, in part as follows:

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*];

The attention of the parties is also drawn to section 29 of the Act which addresses **Landlord’s right to enter rental unit restricted**, in part as follows:

29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (ii) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

Additionally, arising from the exchange between the parties during the hearing, the attention of the parties is drawn to **Part 4** of the Act (sections 44 to 53) which broadly addresses **How to End a Tenancy**.

Finally, as the tenants have succeeded in having the landlord's 1 month notice to end tenancy set aside, I find that the tenants have also established entitlement to recovery of the \$50.00 filing fee. I **ORDER** that the tenants may recover this amount by way of withholding **\$50.00** from the next regular payment of monthly rent.

#### Conclusion

The 1 month notice to end tenancy is hereby set aside, and the tenancy presently continues uninterrupted.

The tenants may withhold **\$50.00** from the next regular payment of monthly rent in order to recover the filing fee for this application.

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: July 08, 2015

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Residential Tenancy Branch

