



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNC, FF, MT

### Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause, for more time to apply to cancel a Notice to End Tenancy, and to recover the fee for filing this Application for Dispute Resolution. After being advised that she had applied to cancel the Notice to End Tenancy within the legislated time period, the Tenant withdrew the application for more time to apply to cancel a Notice to End Tenancy.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make relevant submissions.

The Tenant stated that on June 29, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents submitted to the Residential Tenancy Branch with the Application for Dispute Resolution were sent to the Landlords, via registered mail. The Landlords acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On August 05, 2015 the Tenant submitted numerous documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were served to the Landlord by registered mail on August 05, 2015. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On August 14, 2015 the Landlords submitted documents and photographs to the Residential Tenancy Branch, which the Landlords wish to rely upon as evidence. The female Landlord stated that this evidence was placed in the Tenant's mailbox on August 14, 2015. The Tenant acknowledged receipt of the evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlords and the Tenant agree that this tenancy began on January 15, 2015. The parties agree that there are two suites in the residential complex and that the other suite is occupied by two people not named in this Application for Dispute Resolution.

The male Landlord stated that a One Month Notice to End Tenancy for Cause, dated June 24, 2015, was placed in the Tenant's mailbox on June 25, 2015. The Tenant stated that she received this document on June 25, 2015.

The One Month Notice to End Tenancy, which was submitted in evidence, declared that the Tenant must vacate the rental unit by August 01, 2015. The reasons for cited for ending the tenancy are that the Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk and the Tenant has caused extraordinary damage to the unit/property.

The Landlords and the Tenant agree that:

- on June 14, 2015 the Tenant informed the Landlords of a flood on the front lawn;
- the water resulted in a "sink hole" in the front yard;
- the Landlords inspected the area on June 14, 2015;
- a city employee also inspected the area on June 14, 2015;
- the Landlords asked the Tenant if she had left the outside tap running; and
- the Tenant informed the Landlords that she had not left the tap running.

The male Landlord stated that when the area was inspected by the city employee the employee could not detect a leak and that the water supply to the house needed to remain off until the source of the water could be determined. He stated that as a result of the information provided to him by the Tenant he hired a professional to investigate the source of the flooding. He stated that a leak was not located and that the problem with water has not reoccurred, which causes him to conclude that the flood was the result of an exterior tap being left running. The Landlords submit that the expense of hiring the professional could have been avoided if the Tenant simply acknowledged leaving the tap running.

The Witness for the Landlord stated that he inspected the yard using a variety of methods and was unable to detect a leak. An invoice for this inspection, dated June 17, 2015, was submitted in evidence. The invoice indicates the Landlords were charged \$955.50 for the inspection.

The female Landlord stated that when the Tenant first informed her of the flood the Tenant also declared that she had been experiencing low water pressure. The male Landlord stated that when he arrived at the residential complex on June 14, 2015 he checked the water pressure in the rental unit and in another suite in the residential complex and determined it was normal. The Landlords contend that the report of reduced water pressure supports the conclusion that a tap had been left running at the time of the flood.

The Tenant stated that she does not recall reporting low water pressure when she reported the floor on June 14, 2015. She stated she has periodically experienced low water pressure during her tenancy, which she has attributed to a third party using water elsewhere in the residential complex.

The Tenant stated that she returned home at approximately 3:00 p.m. on June 14, 2015, at which time she did not notice water on the front lawn. She stated she notice the lawn at approximately 5:00 p.m. at which time she reported the problem to the female Landlord. She stated that she had not used the exterior tap for several days; she did not find it running on that date; and she did not turn the tap off on June 14, 2015.

The Tenant stated that when the city employee inspected the yard with a listening device he could hear a faint leak. The Tenant submitted a copy of report from the city employee who attended the site, who reported hearing a "faint" leak. The report indicates that the "homeowner will excavate as the leak is on their side".

The Landlord submitted a federal government date report that shows the rainfall in the area during the month of June of 2015. The report shows that 51.3 cm of rain fell in the first week of June and that 0.6 cm fell two days before the flood was reported.

The male Landlord stated that he believes the Tenant is the individual who left the tap on, in part, because she is the person responsible for watering the front lawn.

The male Landlord stated that he believes the Tenant is the individual who left the tap on, in part, because he asked the occupant of the other suite if they left the tap on and they denied using the tap.

The male Landlord stated that he believes the Tenant is the individual who left the tap on, in part, because he believes she is the person who turned off the tap after the flood was detected. He based this conclusion on a photograph of the site that was taken by the Tenant shortly after the flood was detected, which shows the Tenant in standing water. He stated that there was no standing water when he attended the site later that day, which he contends indicates the water had stopped flowing sometime between the time of the report and the time of his arrival.

### Analysis

On the basis of the testimony of the professional who inspected the yard after the flood but could not detect a leak and the undisputed evidence that the yard has not flooded since June 14, 2015, I find it reasonable to conclude that the flood was not the result of a plumbing problem. In the absence of any other logical explanation, including evidence of a significant amount of rainfall shortly before the flood, I find it reasonable to conclude that the leak was the result of an exterior tap being left on for an extended period of time.

Section 47 of the *Act* authorizes a landlord to end a tenancy if the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property and/or if the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) of the *Act*.

I find that the Landlords have failed to establish grounds to end this tenancy as the Landlords have submitted insufficient evidence to show that the Tenant left an exterior tap running.

In determining that there is insufficient evidence to establish that the Tenant left an exterior tap running, I was heavily influenced by the fact this is an exterior tap over which the Tenant does not have exclusive control. I find it entirely possible that the other occupant of the residential complex turned on the tap and forgot to turn it off.

In determining this matter I have placed no weight on the male Landlord's testimony that the occupant of the other suite in the residential complex denied leaving the tap running. I find this denial carries no more weight than the Tenant's denial.

In determining this matter I have placed no weight on the Landlords' submission that the Tenant was most likely to have left the tap running because she is the person responsible for watering the front lawn. Although I accept that she is the person who uses the tap most often, her frequent use of the tap does not preclude occupants of the other rental unit from using it on occasion.

In determining this matter I have placed limited weight on the Landlords' submission that the Tenant is the individual who turned off the tap after the flood was detected. Although I accept that the photograph taken by the Tenant shortly after the flood was detected and the male Landlord's testimony that there was no standing water when he attended the site later that day indicates the water had stopped flowing prior to the Landlord's arrival, it does not clearly establish that the water stopped flowing after the flood was discovered by the Tenant. I find it entirely possible that the occupant of the lower unit detected the water and shut off the tap prior to the Tenant reporting it to the Landlords.

As the Landlords have failed to establish grounds to end this tenancy in accordance with section 47 of the *Act*, I grant the Tenant's application to set aside this Notice to End Tenancy.

I find that the Tenant's Application for Dispute resolution has merit and that the Tenant is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

As I have set aside the One Month Notice to End Tenancy, dated June 24, 2015, this tenancy shall continue until it is ended in accordance with the *Act*.

I authorize the Tenant to deduct \$50.00 from one monthly rent payment, as compensation for the fee paid to file this Application for Dispute Resolution.

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: August 26, 2015

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Residential Tenancy Branch

