



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## INTERIM DECISION

Dispute Codes      OPC MND MNSD FF  
                                 CNC

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlords and the Tenant.

The Landlords filed on October 30, 2015, seeking to obtain an Order of Possession for cause and a Monetary Order for: damage to the unit, site or property; to keep the security deposit; and to recover the cost of the filing fee from the Tenant.

The Tenant filed on her application on October 23, 2015. The Tenant filed seeking to obtain an order to cancel the 1 Month Notice to end tenancy for cause.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The hearing was conducted via teleconference for 42 minutes. Both Landlords and the Tenant were in attendance and each gave affirmed testimony. The majority of the Landlords' evidence was submitted by the male Landlord. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

On October 23, 2015 the Tenant submitted 2 pages of evidence to the Residential Tenancy Branch (RTB) which consisted of the 1 Month Notice. The Landlord acknowledged receipt of the Tenant's application, hearing documents and evidence and no issues were raised in regards to receipt of that evidence. As such, I accepted those documents as evidence for these proceedings.

On November 16, 2015 the Landlords submitted 38 pages of evidence to the RTB. The Landlord gave affirmed testimony that they served copies of their application and the same evidence upon the Tenant. The Tenant acknowledged receipt of the Landlords' application, hearing documents and evidence and did not raise issues or concerns

regarding receipt of that evidence. As such, I accepted those documents as evidence for these proceedings.

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may sever the unrelated disputes contained in a single application.

During the course of this proceeding I determined that I would sever the Landlords' unrelated monetary requests and I would issue this Interim Decision regarding the requests to uphold and/or cancel the 1 Month Notice; pursuant to Rule 2.3. A final Decision will be issued upon receipt of the additional evidence which the Landlords were ordered to submit no later than January 20, 2016.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which was relevant to the requests to uphold or cancel the 1 Month Notice.

#### Issue(s) to be Decided

1. Should the 1 Month Notice to end tenancy issued October 19, 2015 be upheld or cancelled?

#### Background and Evidence

The Landlords and Tenant entered into a fixed term tenancy agreement which began on July 1, 2015 and was set to switch to a month to month tenancy after June 30, 2016. Rent of \$875.00 is due on or before the first of each month and on June 22, 2015 the Tenant paid \$435.00 as the security deposit.

The rental unit was described as being the upper level of a three level single detached home. The Landlords occupy the two lower levels.

On October 15, 2015 at approximately 12:00 p.m. the Tenant's toilet overflowed and ran continuously which caused water to flood the rental unit. The water dripped down the floor and into the Landlord's residence through the pot lights in the ceiling of the Landlords' residence.

The Landlords stated that they acted immediately with the male Landlord removing paintings and placing buckets and blankets down to catch the water coming into their residence. The female Landlord said she went up to the rental unit and knocked on the door to gain entry while yelling at the Tenant about the water. She said the Tenant yelled back at her saying "yes I see it" but she did not open the door immediately.

The Landlord argued that it took almost ten minutes before the Tenant let her into the unit and when she gained access she saw multiple towels and a comforter on the floor.

She also saw that the back of the toilet was off and a plunger was in the toilet bowl, as displayed in their picture evidence. The Landlord submitted that the Tenant told her that she did not notice the toilet was running because she was on the phone dealing with a personal crisis.

The Landlords argued that the Tenant told them that the toilet had plugged and that she repeatedly flushed the toilet. They asserted that the amount of water on the floor was substantially more than a single toilet bowl overflowing.

The restoration company attended on October 17, 2015 and on October 19, 2015 the Landlords hired a plumber to assess the toilet. No problems were found with the toilet and it appeared to be flushing fine and shutting off when full, as stated on the plumber's invoice submitted into evidence.

The Landlords submitted that because there were no problems found with the toilet they felt the damage was caused due to the Tenant's neglect so they decided to evict her. A 1 Month Notice to end tenancy for cause was served to the Tenant on October 19, 2015 listing an effective date of November 20, 2015 for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
  - Put the Landlord's property at significant risk
- Tenant has caused extraordinary damage to the unit/site or property park

The Tenant testified that this incident was simply an accident. She stated that she had worked nights and got up sometime before noon and used the bathroom. She flushed the toilet and it appeared to be jammed as not everything went through. She explained that a few pieces of paper came back up so she flushed the toilet a second time and went back to bed where she laid talking on the phone.

The Tenant argued that she did not flush the toilet multiple times, only twice. She said she was half asleep and did not realize that the toilet had kept running. She asserted that there had been a lot of rain that night so she simply thought she was listening to the rain water.

The Tenant confirmed that she did not let the Landlord into the rental unit right away as she was not dressed. She said that when she heard the Landlord knock and yell water she got up, saw the water, and immediately started to do what she could to stop the water flow. Then she put some clothes on and let the Landlord into the unit.

The Tenant submitted that there had been times in the past when she had to use the plunger to clear the toilet; however, she had never experienced the toilet continuously running before. She asserted that there have been times since that event where the toilet flap does not close and the toilet keeps running; which she has reported to the Landlords. She stated this was not a result of neglect; it was simply an accident.

The Landlords confirmed that they have had additional plumbers look at the toilet two additional times and no issues have been found. They stated they had filed a claim with their insurance company and that their insurance company had no intentions of seeking recovery of the losses from the Tenant because they were told that their insurance company would not be successful in this type of situation.

The Landlords stated that they had an agreement with their insurance company that if they repaid the amount of the claim they would not suffer further losses which would result from making a claim against their insurance.

The Tenant argued that the Landlords did not serve her with evidence of such an arrangement and requested that they submit that evidence. In response to the Tenant's request the Landlords were ordered to submit additional evidence consisting of proof of the aforementioned arrangement with their insurance company and any loss as a result of their claim. That evidence is to be served upon the RTB and the Tenant no later than January 20, 2016 at which time a final Decision will be issued in response to the Landlords' monetary claim.

The Landlord then changed his submission and stated that he had not made such an arrangement; rather he had general knowledge that if he repaid the loss to the insurance company that it would clear their claim and they would not suffer further loss.

The Tenant wanted it noted that the Landlord contradicted his own testimony, first by stating that they had made the arrangement with their insurance company and then changed their testimony only after they were ordered to submit the proof.

### Analysis

Upon review of the 1 Month Notice to End Tenancy issued October 19, 2015, I find the Notice was served upon the Tenant in a manner that complies with section 89 of the Act. However, the Notice was not completed in accordance with the requirements of section 53 of the Act as it listed an incorrect effective date of November 20, 2015.

Section 53 (1) of the *Act* provides that if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) as applicable.

Subsection (2) of Section 53 states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

In this case rent was payable on the first of each month; therefore, the effective date of the Notice should be on the last day of a month. Based on the aforementioned, I find the effective date of the 1 Month Notice issued October 19, 2015 automatically corrected to be November 30, 2015, pursuant to section 53(2) of the *Act*.

Where a Notice to End Tenancy comes under dispute, the Landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the Landlord need only prove one of the reasons.

In this case the Landlords' relied solely on their opinion that the damage which resulted from the toilet overflowing and running continuously was caused due to the Tenant's neglect. Furthermore, the Landlords submitted that it was that alleged neglect that was proof that the Tenant put the Landlord's property at significant risk and caused extraordinary damage to the unit/site or property park.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I favored the Tenant's submission that the damage was the result of an unfortunate accident or chain of events. I favored the Tenant's submission over the Landlords' submissions that the Tenant was negligent because she flushed the toilet numerous times and then failed to not stop the water from running into their suite.

I favored the Tenant's submissions because her testimony was forthright and credible. I found the Tenant's submission of the events which took place that morning to be credible given the circumstances presented to me during the hearing.

In making the above findings, I considered that it is not unreasonable for a person to flush a toilet a second time if all of the waste did not flush down the first time. Such events could happen if the toilet was older and corroded over time or in cases involving a low flush toilet. There was disputed testimony regarding how many times the toilet was actually flushed that morning and in absence of documentary evidence to the contrary I accepted the Tenant's version of events.

I considered that there was evidence that the Toilet had jammed or plugged in the past which caused the Tenant to have to use a plunger. Furthermore, I accept that the Tenant was tired after working the night shift and that she simply went back to bed immediately after flushing the toilet a second time.

Also, when considering that it was raining heavy the night before and the Tenant was tired and dealing with an emotional situation on the phone, it is probable that she thought she was listening to the rain, when it fact it was water running from the toilet.

After consideration of the totality of the oral and documentary evidence before me, I find that the damage was not the result of the Tenant intentionally putting the Landlord's property at significant risk nor was it the result of the Tenant causing extraordinary damage to the unit/site due to neglect. Rather, I conclude the damage was the result of unfortunate events resulting in the toilet plugging and the flange not closing all of the way which caused water to overflow and run continuously until noticed by the Landlords in the lower level.

Based on the above, I find that the Landlords submitted insufficient evidence to prove the merits of the 1 Month Notice issued October 19, 2015. Accordingly, I uphold the Tenant's application and cancel the 1 Month Notice to end tenancy for cause issued October 19, 2015 and I dismiss the Landlords' request for an Order of Possession.

### Conclusion

The Tenant was successful with her application and the 1 Month Notice issued October 19, 2015 was cancelled and is of no force or effect. This tenancy continues until such time as it is ended in accordance with the Act.

The Landlords' request for an Order of Possession was dismissed, without leave to reapply.

62(3) of the Act stipulates that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

The Landlords were ordered to submit additional evidence to the RTB and the Tenant consisting of proof of the previous arrangement made with their insurance company and any loss as a result of their claim, no later than **January 20, 2016**. No other evidence or submissions will be accepted or considered.

This Interim 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: December 29, 2015

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Residential Tenancy Branch

