



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and the landlords.

During the hearing the parties provided extensive testimony regarding issues throughout the tenancy. In particular, the landlord made several allegations that the tenant falsified documents, including the original tenancy agreement. This decision records only relevant evidence and testimony that I have considered in adjudicating this dispute.

Prior to the hearing the tenant submitted an "Amendment to an Application for Dispute Resolution" form and a monetary order worksheet in which she sought to recover costs for an access fob replacement and mailing costs for this proceeding.

I advised the tenant at the start of the hearing that the recovery of mailing costs for dispute resolution proceedings were not recoverable. I also advised that I found the request to recover her costs for an access fob replacement to be unrelated to the matters in the Notice to End Tenancy.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As such, I have not allowed the requested amendments. I advised the parties the only issues to be dealt with in this decision would be the validity of the Notice to End Tenancy and recovery of the filing fee paid by the tenant.

However, during the hearing the landlords requested an order of possession should the tenant be unsuccessful in her Application for Dispute Resolution. As per Section 55 of the *Residential Tenancy Act (Act)*, I am required to consider this verbal request should the tenant be unsuccessful.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

Should the tenant be unsuccessful in seeking to cancel the 1 Month Notice to End Tenancy for Cause it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

Background and Evidence

The tenant submitted into evidence a tenancy agreement signed by the parties on August 15, 2012 for a 1 year fixed term tenancy beginning September 1, 2012 for a monthly rent of \$1,150.00 due on the 1<sup>st</sup> of each month with a security deposit of \$575.00 paid.

The landlords submitted into evidence a subsequent tenancy agreement signed by the parties on September 3, 2013 for a 1 year fixed term tenancy beginning September 1, 2013 for a monthly rent of \$1,150.00 due on the 1<sup>st</sup> of each month with a security deposit of \$575.00 paid.

The landlords stated the tenancy has continued on a month to month basis since September 1, 2014.

The landlords submitted that in October 2015 they were advised by the strata council the new tenants were living in the rental unit. The landlords stated that they discussed with the tenant and they got many different versions.

The landlords state that originally the tenant stated that her son and his girlfriend were staying with her and her daughter; then she stated that the tenant herself was living at her boyfriends and only her daughter; her son and his girlfriend were living in the rental unit. The landlord stated they believe there are 4 adults living in the rental unit.

The landlords also submit that they conducted an inspection of the rental unit and due to boxes and luggage all around the rental unit "blocking every which way." The landlords submitted that it was not possible for 4 adults to be living in such a small space with all of these items but rather it looked like a storage unit.

The parties agreed the rental unit is a 2 bedroom; 2 bathroom unit of about 925 square feet with a kitchen, living area, and den.

The tenant submitted several photographs of the rental unit that she states were taken on the same day the landlords completed their inspection. She stated that there were

only a few boxes and 2 suitcases and a new television still in its box and they were all located in the den. I note that none of the photographs showed any items that appeared to be storage or suitcases.

The landlord believes the photographs do not reflect the condition of the unit the day that they completed the inspection but they did not take any photographs of the unit on that day.

The tenant confirmed that since approximately mid-September her son and his girlfriend have been staying full time in the unit. She states that they intend to find their own apartment once they "are back on their feet". She stated that her daughter lives in the rental unit on a part time basis, approximately ½ month at a time.

The landlord asserts the tenant has violated several other aspects of their contract and believes the tenant to be untruthful. As a result, the landlord believes the tenancy should end. As noted above, I note that these issues are relevant to the outcome of this decision and I have not considered them.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if there are an unreasonable number of occupants in a rental unit.

In order to establish cause to end a tenancy the burden is on the landlord to provide sufficient evidence to establish the specified cause identified in the 1 Month Notice warrants an ending of the tenancy.

From the testimony and evidence of both parties, I accept that, for at least ½ of each month, there are 4 occupants of the rental unit. Even though the tenant's daughter is 16 years old, I find, for the purposes of this proceeding, she should be considered as an adult occupant.

However, I find the landlord has failed to provide any evidence to establish that this number of people in a rental unit with 2 bedrooms; 2 bathrooms; a den; a kitchen; and living area under normal circumstances would be unreasonable.

While the landlord has asserted that the unit is so packed with boxes and other storage items that it is difficult to move around in the unit, I find they have provided no evidence to support this position. In fact the only evidence of the condition of the rental unit, the tenant's photographs, shows little or no impact from the storage of any items.

I acknowledge that the photographs show absolutely no stored items. However, I also find, on a balance of probabilities, it is unlikely that the tenant could have hidden the large volume of boxes and storage items the landlord suggests to "stage" the photographs.

Based on the above, I find the landlord has failed to establish the tenant has allowed an unreasonable number of occupants as a cause to end the tenancy.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause issued on October 27, 2015 is cancelled and that the tenancy remains in full force and effect.

As I have cancelled the Notice I dismiss the landlord's verbal request for an order of possession, pursuant to Section 55(1) of the *Act*.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the tenant for this application. I order the tenant may deduct this amount from a future rent payment, pursuant to Section 72(2)(a) of the *Act*.

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: January 06, 2016

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Residential Tenancy Branch

