



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes          CNC, OLC, OPL, OPC, FF

### Introduction

This was a cross-application hearing for Dispute Resolution.

The Landlord applied requesting an order of possession and to recover the fee for the Application.

The Tenants applied to cancel the 1 Month Notice To End Tenancy For Cause, and for the Landlord to comply with the *Residential Tenancy Act* (the Act), regulations or the tenancy agreement.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to an order of possession based on the 2 Month Notice To End Tenancy For Landlord's Use Of Property?
- Is the Landlord entitled to an order of possession based on the 1 Month Notice To End Tenancy For Cause?
- Is the Landlord entitled to recover the cost of the filing fee?

### Preliminary and Procedural Issues

At the start of the hearing, the Tenant's advocate stated that the Tenants were not served with the Landlord's Application. The advocate states the Tenants did not receive a Notice of Hearing and Application from the Landlord. The Tenants testified that they did receive 36 pages of evidence from the Landlord on July 15, 2016.

The Landlord testified that the Notice of Hearing was handed to the Tenants by J.W. an agent of the Landlord on July 16, 2016.

The Legislation permits me to grant the Landlord an order of possession in certain situations regardless of whether or not the Tenants were served with the Landlord's Application. Section 55 of the *Act* requires the director to grant the Landlord an order of possession of the rental unit if the director dismisses the Tenant's application or upholds the Landlord's notice, or when a notice to end the tenancy has been given by the Landlord, and the Tenant has not disputed the notice.

The Landlords testified that a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated May 27, 2016, ("the 2 Month Notice") was served on the Tenants on June 8, 2016. The 2 Month Notice indicates that the effective date that the Tenants must move out of the rental unit is August 1, 2016. The Tenants testified that they received the 2 Month Notice on June 8, 2016. The Tenants advocate submits that the Tenants did not dispute the Notice because they accept the 2 Month Notice. The Tenant's ask that the effective date of the 2 Month Notice be corrected to be August 31, 2016 in compliance with the legislation.

Pursuant to section 49 and 53 of the Act, the effective date of the 2 month Notice automatically changes to be the earliest date that complies with the section. I find that the effective date of the 2 Month Notice is August 31, 2016. The tenancy is ending on August 31, 2016.

The Landlord requested that the hearing continue and requests an order of possession effective July 31, 2016, based on the 1 Month Notice To End Tenancy For Cause dated June 9, 2016, ("the 1 Month Notice").

The Landlord was informed that regardless of whether he is successful in ending the tenancy based on the 1 Month Notice, a Tenant who receives a Notice To End Tenancy for Landlord's Use of Property under section 49 of the Act is entitled to receive from the Landlord on or before the effective date of the Landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The parties briefly discussed a settlement to the dispute; however, a settlement agreement could not be reached.

Near the end of the hearing, I declined the opportunity to hear from the Landlord's witnesses. As explained in the body of this decision, the witness testimony itself would not be enough to establish illegal activity, the terms and conditions of the tenancy agreement, and the proof of the alleged damage.

### Background and Evidence

The parties testified that the tenancy started on December 1, 2013, and is currently a month to month tenancy. Rent in the amount of \$1,500.00 is to be paid of the first day of each month. The Tenants paid a security deposit of \$750.00 to the Landlord.

The Tenants testified that they received the 1 Month Notice on June 9, 2016. The 1 Month Notice indicates the Landlord is ending the tenancy because:

- Tenant has allowed an unreasonable number of occupants in the unit /site
- Tenant has engaged in illegal activity that has, or is likely to:
  - Damage the Landlord's property
  - Jeopardize a lawful right or interest of another occupant or the Landlord
- Tenant has caused extraordinary damage to the unit/site property /park

The Landlord has the burden to prove cause for the reasons listed in the 1 Month Notice.

The Landlord testified that he toured the property and looked at the deck. He states that he noticed the Tenants have ducks which are agricultural animals on the property and he submits that this is illegal. He submits that the ducks have damaged the landscaping of the property. He submits that the Tenants have a dog on the property which is not permitted under the tenancy agreement. He believes there is somebody else living in the rental unit, and states there was a locked room in the unit but is not sure if there was a person in there or not. He submits that another person living in the unit is a breach of the tenancy agreement. He submits that the Tenants are smoking on the property and that this is a breach of the tenancy agreement. He submits that a shed on the property is not for the Tenant's use. He also submits that the Tenants have a trailer on the property that he believes people are living in.

The Tenants responded that the rental unit is a five bedroom home with four people living there. They testified there is nobody else living with them and that they do not receive any rent from anyone. They testified that every room was accessible for the Landlord to walk through during the inspection. The Tenant T.B. testified that her daughter visits a few times per week with her dog. She testified that the Landlord gave permission to use the shed as part of the tenancy agreement. She testified that the trailer belongs to the Tenant's. She testified that the eaves on the roof of the rental unit have improper drainage which causes sand to fall all around the house.

The Tenants testified that none of the damage that the Landlord has testified about was caused by the Tenants. She testified that there is no damage to the deck. She testified that chunks from the roof blow off the roof when it is windy.

The Landlord's agent R.D. acknowledged that there are issues with the eaves and downspouts on the house. The Landlord testified that no written warnings or breach letters were previously issued to the Tenants regarding the Landlord's concerns. The Landlord testified that he did not provide any documentary evidence to support his testimony that having the ducks is illegal activity.

The Landlord did not provide the Residential Tenancy Branch with a copy of the tenancy agreement. The Landlord did not provide any photographic evidence in support of the reasons for issuing the 1 Month Notice.

Residential Tenancy Policy Guideline # 8 states that where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

Residential Tenancy Policy Guideline # 32 states that the term “illegal activity” would include a serious violation of federal, provincial, or municipal law, whether or not it is an offence under the *Criminal Code*. The Landlord has the burden of proving the activity was illegal. In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the Landlord’s property, and the jeopardy that would attach to the activity as it affects the Landlord or other occupants.

### Analysis

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

The Landlord did not provide documentary evidence of a relevant statute or bylaw to support his allegation that the Tenants engaged in illegal activity by keeping the ducks on the property. There is also insufficient evidence from the Landlord to show the extent of damage the ducks caused to the Landlord’s property. I find that the Landlord has failed to prove that the Tenants have engaged in illegal activity that has, or is likely to damage the Landlord’s property or jeopardize a lawful right or interest of another occupant or the Landlord.

The Tenant and the Landlord do not agree on some of the terms and conditions of the tenancy such as use of the shed, smoking, pets, and the trailer. When a Landlord and a Tenant provide testimony that is equally believable, the burden of proof rests with the party making the claim. The Landlord did not provide a copy of the tenancy agreement. The Landlord did not provide any photographic evidence to establish there was damage. I note that the Landlord testified that there was a problem with the eaves and downspouts on the house. I also note that the Landlord testified that no warning or breach letters were previously sent to the Tenant with respect to the Landlord’s concerns.

There is insufficient evidence from the Landlord that the Tenants have allowed an unreasonable number of occupants in the unit. I also find that there is insufficient evidence from the Landlord that the Tenants have caused extraordinary damage to the unit or property.

The 1 Month Notice To End Tenancy For Cause dated June 9, 2016, is set aside. The Landlords application for an order of possession based on the 1 Month Notice is dismissed.

I do not grant the Landlord recovery of the fee that the Landlord paid to make the application for dispute resolution.

The Tenancy is ending on August 31, 2016, which is the effective date of the 2 Month Notice To End Tenancy For Landlord's Use Of Property. The Tenants accepted the 2 Month Notice and I am satisfied that the 2 Month Notice complies with the form and content of a notice under section 52 of the Act. I grant the Landlord an order of possession effective at 1:00 pm on August 31, 2016.

#### Conclusion

The 1 Month Notice To End Tenancy For Cause dated June 9, 2016, is cancelled. The 2 Month Notice To End Tenancy For Landlord's Use Of Property dated May 27, 2016 is upheld.

I grant the Landlord an order of possession effective at 1:00 pm on August 31, 2016.

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 26, 2016

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Residential Tenancy Branch