



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

CNC OLC ERP LRE FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on October 11, 2016 (the "Application"). The Tenants applied for the following relief pursuant to the Residential Tenancy Act (the "Act"):

- an order cancelling a 1 Month Notice to End Tenancy for Cause, dated October 7, 2016 (the "1 Month Notice");
- an order that the Landlord comply with the Act, Regulations or a tenancy agreement;
- an order that the Landlord perform emergency repairs to the rental unit;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit; and
- an order granting recovery of the filing fee.

The Tenants were represented at the hearing by the Tenant R.P. The Landlord, who did not attend the hearing, was represented by R.F., and agent. Both in attendance provided a solemn affirmation.

The Tenant R.P. testified the Tenants' initial Application package, which included the Notice of a Dispute Resolution Hearing, was served on the Landlord by registered mail on October 11, 2016. The Landlord's agent acknowledged receipt on October 18, 2016.

The Tenant R.P. also stated the Tenants' subsequent evidence package, consisting of five pages, was served on the Landlord by registered mail. The Landlord's agent denied the Landlord received the Tenants' documentary evidence. However, on review of the evidence, I find there is no prejudice to the Landlord in proceeding with the Tenants' Application. The documentary evidence is either not relevant or originated with the Landlord.

The Landlord did not submit any documentary evidence, other than a copy of the 1 Month Notice as provided for during the hearing. No further issues were raised with respect to service or receipt of the Tenants' Application or documentary evidence.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

### Preliminary and Procedural Matters

Several orders are being sought by the Tenant, as summarized above. However, Rule 2.3 of the Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue in the Tenants' Application was whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenants' application to cancel the 1 Month Notice, with leave to reapply for the remainder of the relief sought at a later date.

In addition the Tenants' Application indicates they are disputing a notice dated that was received on October 7, 2016. A copy of the notice was not submitted by either party. With the agreement of both parties, the Landlord's agent was given until 1:00 p.m. on November 30, 2016, to provide a copy of the 1 Month Notice to the Residential Tenancy Branch, which she did.

### Issue to be Decided

Are the Tenants entitled to an order cancelling the 1 Month Notice?

### Background and Evidence

The tenancy agreement between the parties was not reduced to writing. However, the Tenant R.P. and the Landlord's agent agreed the Tenants moved into the rental unit on or about March 1, 2016. Rent in the amount of \$1,400.00 per month is due on the first day of each month. The Tenants did not pay a security deposit at the beginning of the tenancy. The Landlord's agent testified that the tenancy was only intended to be in place for two months.

The Landlord's agent provided oral testimony in support of the 1 Month Notice, which was served on the Tenants in person on October 7, 2016. The Tenants' Application confirms receipt of the 1 Month Notice on that date. The 1 Month Notice was issued on the bases that the Tenants are repeatedly late paying rent; that the Tenants have allowed an unreasonable number of occupants in the rental unit; that the Tenants have caused extraordinary damage to the rental unit; and that the Tenants have not done required repairs of damage to the rental unit.

With respect to the Landlord's allegation that rent has been repeatedly late, the Landlord's agent testified to her understanding that rent has been late every month since the tenancy began. She stated that rent for November was paid on November 8, 2016, but did not elaborate on other months. The Landlord did not submit any documentary evidence in support of this allegation, and the Landlord's agent acknowledged rent payments are up to date.

In reply, the Tenant R.P. testified that rent was always paid on time.

With respect to the Landlord's claim that there are an unreasonable number of people occupying the rental unit, R.F. stated there are eight people living in the three bedroom unit.

In reply, the Tenant R.P. testified there are only six people living in the rental unit, and that this is not unreasonable.

With respect to the Landlord's claim that the Tenants have caused extraordinary damage to the rental unit and have not performed required repairs, the Landlord's agent testified that she has observed three broken windows, a broken lamp post in the yard, and a missing window screen. However, the Landlord did not submit any documentary evidence in support of damage to the rental unit or of the need for repairs.

In reply to the Landlord's allegation the Tenants have damaged the rental unit, the Tenant R.P. acknowledged a window was broken but that it has been repaired. He denied any other damage. In any event, the Tenant R.P. submitted that he has until the end of the tenancy to make repairs to the rental unit.

The Landlord's agent also submitted that the Tenants have prevented the Landlord from accessing parts of the garage and laundry facilities, and has been verbally abusive to the Landlord when she attends the rental property. The Tenant R.P. denied both of these allegations.

### Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to end a tenancy for cause for the reasons listed therein. In this case, the Landlord wished to end the tenancy on the bases that that the Tenants are repeatedly late paying rent; that the Tenants have allowed an unreasonable number of occupants in the rental unit; that the Tenants have caused extraordinary damage to the rental unit; and that the Tenants have not done required repairs of damage to the rental unit.

On behalf of the Landlord, R.F. submitted that the Tenants have made late payments of rent each month of the tenancy, a claim the Tenant R.P. denied. No documentary evidence in support of late payments was provided to me. Indeed, when asked, the Landlord's agent was unable to provide me with specifics. I find there is insufficient evidence before me to conclude the Tenants have been repeatedly late with their rent payments.

The Landlord's agent also submitted that the Tenants have allowed an unreasonable number of occupants in the rental unit. The Tenant R.P. testified there are six occupants in the three bedroom rental unit. I find there is insufficient evidence before me to conclude the Tenants have permitted an unreasonable number of occupants in the rental unit.

Further, the Landlord's agent submitted that the Tenants have damaged windows and a lamp post and have not performed required repairs. Other than the damage to a window, which the Tenant R.P. testified has been repaired, the Landlord's claims of damage was denied. Further, the Tenant R.P. submitted that even if there was some damage to the rental unit, the Tenants should have until the end of the tenancy to make these minor repairs. I find there is insufficient evidence before me to conclude the Tenants caused the damage as alleged or has failed to make required repairs.

In light of the above, I order that the 1 Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Having been successful, I find the Tenant is entitled to recover the \$100.00 filing fee paid to make the Application. I order that this amount may be deducted from a future rent.

### Conclusion

I order that the 1 Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with 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: November 30, 2016

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Residential Tenancy Branch