



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF, OLC, PSF

### Introduction

This hearing dealt with an application from the tenants under the *Residential Tenancy Act* (the *Act*). The tenants applied for:

The tenant applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to Section 62;
- an order requiring the landlord to provide services or facilities required by the tenancy agreement or law pursuant to Section 65; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Neither party submitted any documentation for this hearing.

### Issue to Decide

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order to have the landlord comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to provide services or facilities required by the tenancy agreement or law?

### Background and Evidence

The landlord gave the following testimony. The landlord testified that tenant advised that the toilet bowl was leaking and that it required some repair. The landlord testified that the tenant phoned her several hours later and advised that it was just a nut that was loose and that the leak had been repaired. The landlord testified that the ceiling of the unit below had been damaged and needed to be replaced because of the leak. The landlords testified that the subject tenant is responsible for this damage and that they must repair it or pay to have it repaired. The landlord testified that she issued a One Month Notice to End Tenancy for Cause on November 30, 2016 on the grounds that; *the tenant breached a material term of their tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The tenant gave the following testimony. The tenant testified that the leak was a very small one and that it was repaired within several hours. The tenant testified that the landlord is attempting to have him repair or pay for old damage in the suite below. The tenant testified that the landlord is responsible for repairs and there was not a malicious act or negligence to cause the damage.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the hearing and my findings are set out below. Neither party submitted a copy of the Notice to End Tenancy but both agreed to its form and content.

When a landlord issues a notice under Section 47 of the Act they bear the responsibility in providing sufficient evidence to support the issuance of that notice. The landlord issued the notice based on water leak that they allege is the tenants fault and that they must repair. The landlord has not provided sufficient evidence to show that it was the tenants fault. In fact, I find that this was just a minor leak that occurred through no fault of anyone, but falls under the landlords' responsibility to maintain the property in accordance with Section 32 of the Act. Furthermore, in the landlords own testimony, she confirmed that she never gave the tenant written notice of any issue she had with the tenant but just issued the notice. Based on all of the above and on a balance of probabilities, the landlord has not provided sufficient evidence to support the issuance of the notice and I therefore set it aside.

The tenant did not provide sufficient evidence to support the balance of his claim seeking an order to have the landlord to comply with Act , regulation or tenancy agreement or an order to have the landlord provide services or facilities required by the tenancy agreement or the law, accordingly, I dismiss that portion of his application. As the tenant has only been partially successful in their application, they must bear the cost of the filing fee.

### Conclusion

The One Month Notice to End Tenancy for Cause dated November 30, 2016 with an effective date of December 31, 2016 is set aside. It is of no force or effect. The tenancy continues.

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 12, 2017

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Residential Tenancy Branch