



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, FF

### Introduction

This hearing was convened by way of conference call in response to the tenants' application for an Order to cancel a One Month Notice to End Tenancy for Cause; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant, the landlord and an agent/witness for the landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. 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.

### Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy for Cause?

- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?

### Background and Evidence

The parties agreed that this month to month tenancy started on September 15, 2015. Rent for this unit is \$1,050.00 per month due on the 1<sup>st</sup> of each month in advance. The tenants paid a security deposit of \$525.00 and a pet deposit of \$525.00 on September 08, 2015.

The landlord testified that the tenants were served a One Month Notice to End Tenancy for cause on November 29, 2016 by posting the notice to the tenant's door. This Notice has been provided in documentary evidence and has an effective date of December 31, 2016. The Notice provides one reason to end the tenancy; that the tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit, site or property.

The landlord's witness testified that she went to view the rental unit as a realtor for the landlord. The witness had seen the previous listing pictures for the unit showing in it a good clean condition. The tenants were given notice of this viewing but when the witness arrived at the unit the first thing she noticed was the broken gate. The male landlord informed her that the gate was not broken prior to this tenancy. The witness testified that when she entered the unit, there was a strong smell of smoke which in her professional opinion indicated that the tenants had been smoking in the unit. The house was unkempt despite the tenants being served a Notice of entry by the landlord. The witness testified that she took some pictures of areas the unit and these have been included in documentary evidence.

The witness testified that she spoke about the price for the unit due to its condition and that it would list for less than it did two years ago. The witness testified that she also

saw a hole in a wall, chips and dings on the kitchen cupboards, the curtain rods were falling off the wall, the rugs were stained and in the outside of the unit the lawn, which had been in a lovely condition, were now just mud.

The landlord testified that the tenants have caused extraordinary damage to the unit and yard. The tenants have been smoking in the unit and one cigarette butt was found just inside the sliding doors and one was found in the rec room; the tenants were authorised to have two dogs but the landlord saw snakes also in the unit; the light fixture in the kitchen had been broken, the sliding glass door lock was broken and there was a rip in the screen door; the carpets were stained and will likely have to be replaced; the downstairs rec room ceiling tiles are cracked and the two pot lights have been smashed; the walls are filthy and in need of repair; there is a hole in the kitchen wall; the gate hinge was broken; the kitchen cupboards are all banged up beyond normal wear and tear and the lawn has been destroyed.

The landlord testified that based on this damage and the unclean condition of the rental unit the landlord seeks to end the tenancy and requested an Order of Possession for the end of January, 2017.

The tenant in attendance at the hearing disputed the landlord's claims. The tenant testified that they do not smoke in the unit but rather smoke outside. If the unit smells of smoke it may be caused from the ashtray which the tenant empty into the kitchen garbage. The tenant testified that she does not consider the snakes to be pets but are a hobby and she did not know she needed permission to have them.

The tenant testified that they have not caused extraordinary damage to the unit or yard. The kitchen lights were missing a clip and woke the tenant up on night when it fell off; the sliding glass door does not have a broken lock and this works fine. The screen door had a small rip in it at the start of the tenancy and if this has become worse then the tenant is not aware of it. The carpets had a stain on them at the start of the tenancy. The tenants bought a steam cleaner and they regularly clean the carpets. This is a

dusty house as it is located on a corner lot. The rec room is hardly ever used except for storage and the tenant has no idea what cracks in the ceiling tiles the landlord is referring to. The tenant testified that she has no idea what the landlord is referring to about broken pot lights in the rec room. The lights are still working in that area.

The tenant testified that the walls have been cleaned and a hole was repaired by the tenants; the gate hinge has also been repaired when the old bolt rusted through this was replaced by the tenants. The tenant testified that the lawn has never looked better and neighbours have commented on how good it looks. When the tenants moved into this unit this part of the lawn shown in the pictures was always mud. The front lawn was grass and weed and the tenants pulled the weeds out and put more seed down. The side yard has never had grass.

The tenant testified that the landlord wants the tenants to move out as she wants to sell the house and does not want to give the tenants a Two Month Notice to End Tenancy. The tenants seek an Order to cancel the Notice and seek an Order for the landlord to comply with the *Act* and provide a Two Month Notice when the unit has been sold.

### Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

With regard to the tenants' application to cancel the One Month Notice; In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

To provide some clarity on this matter I provide a definition on the word "extraordinary" and find this means something that goes far beyond the ordinary. Therefore, while

considering the landlord's reason provided on the Notice the key word is extraordinary when it refers to damage. I would therefore consider damage to a unit that is beyond normal wear and tear, damage that cannot easily be repaired or damage that is so extraordinary that it would cost a significant amount to repair.

I am satisfied that there is some damage but I do not consider this damage to fall under the definition of extraordinary and the tenants are required under s. 32 of the Act to repair any damage caused through their actions or neglect at the end of the tenancy. I find that most of the damage described by the landlord and the landlord's witness can be easily cleaned or repaired. I further find that the tenant has contradicted much of the landlord's claims concerning the damage and while the landlord has provided some documentary evidence such as a few photographs showing the kitchen cabinets, the lawn or absence of lawn, the broken gate, a torn screen and a picture of the kitchen; the landlord has not completed a move in condition inspection report to show the condition of the unit at the start of the tenancy in order for me to consider if some of this damage was caused during the tenancy.

In the absence of any corroborating evidence that the tenants have caused extraordinary damage, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

With regard to the tenants' application for an Order for the landlord to comply with the Act, regulations or tenancy agreement; the tenant testified that the landlord should be serving the tenants with a Two Month Notice to End Tenancy if she is selling the house. As the landlord has not yet sold the property then the matter of a Two Month Notice is not currently relevant. As I have insufficient evidence to show the landlord has not complied with the Act, regulations or tenancy agreement then I dismiss this section of the tenants' application.

As the tenants' application has some merit I find the tenants are entitled to recover their filing fee of **\$100.00** from the landlord and may deduct this amount from their next month's rent only when it is due and payable.

### Conclusion

The tenant's application is allowed. The One Month Notice to End Tenancy for Cause dated November 29, 2016 is cancelled and the tenancy will continue.

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 16, 2017

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Residential Tenancy Branch