



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, RP, FF

### Introduction

These hearings were convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on December 12, 2016. The Tenant applied for the following reasons: to cancel a notice to end tenancy for cause; for the Landlords to comply with the *Residential Tenancy Act* (the “Act”), the regulation or tenancy agreement; and, to recover the filing fee from the Landlords. The Tenant amended her Application on December 26, 2016 to request the Landlord complete repairs to the rental unit.

The Landlords and the Tenant appeared for the hearings and provided affirmed testimony. During the January 16, 2017 hearing the Landlords confirmed receipt of the Tenant’s: Application; amended Application; and small amount of documentary evidence prior to the hearing. However, while the Tenant confirmed receipt of the Landlords’ 38 pages of documentary and digital evidence, she submitted that it had been served to her late pursuant to the time limits provided by the Dispute Resolution Rules of Procedure and that she had not had sufficient opportunity to rebut and respond to the Landlords’ extensive amount of evidence.

As a result, I adjourned the January 16, 2017 hearing to allow the Tenant an opportunity to respond and provide rebuttal evidence for this hearing. The full reasons of the adjournment were detailed in my Interim Decision dated January 16, 2016 and should be read in conjunction with this Decision. At the reconvened hearing, the Landlords confirmed receipt of the Tenant’s additional 17 pages of documentary evidence.

### Issue(s) to be Decided

- What is to happen to the notice to end tenancy for cause?
- What action is to be taken with respect to any repairs to the hot water tank?

### Background and Evidence

The parties agreed that this tenancy for a rental unit in a residential building started on September 1, 2014 for a fixed term of one year. Although the signed tenancy agreement required to the Tenant to vacate the rental unit on August 31, 2015, the tenancy was continued on a month to month basis with the acceptance of rent.

Rent for this tenancy started at \$1,225.00 and is currently payable in the amount of \$1,260.53 on the first day of each month. The Tenant paid a security deposit of \$612.50 and a pet damage deposit of \$612.50 on August 7, 2014, which the Landlords still retain.

The Landlords confirmed the Tenant was served with a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") on December 5, 2016 which was posted to the rental unit door. The Landlords provided a copy of the 1 Month Notice into evidence which shows the only reason for ending the tenancy was because the Tenant is alleged to have put the Landlords' property at significant risk. The Tenant confirmed the 1 Month Notice was received by her on December 5, 2016 and that she had filed her Application on December 12, 2016 to dispute it. Therefore, I determined that the Tenant had made the Application within the 10 day time limit imposed by Section 47(4) of the Act.

The Landlords were asked to present evidence in relation to the reason on the 1 Month Notice. During that testimony, the Landlords indicated that in addition to the reason on the 1 Month Notice, the Tenant had caused significant interference, disturbance and adversely affected the quiet enjoyment of the Landlord and other residents in the building. However, these reasons were not indicated on page 2 of the 1 Month Notice provided by the Landlords into evidence. The Tenant had not provided a copy of the 1 Month Notice into evidence but confirmed that the only reason indicated on the copy served to her was for significant risk to the property and no other reasons were selected. As a result, I informed the Landlords that I was confined to make findings only on the single reason the 1 Month Notice had been served to the Tenant and that to make findings on other reasons that the Tenant had not been put on notice for would be prejudicial to the Tenant, especially if it resulted in an eviction of the Tenant.

After some discussion on this issue, the Landlord moved to withdraw the 1 Month Notice as the Landlords wanted to rely on evidence to support other reasons that they had not elected on the 1 Month Notice. The Tenant raised no objections to the withdrawal of the 1 Month Notice. Accordingly, as there were no legal findings for me to make on the 1 Month Notice dated December 5, 2016, I dismissed the Tenant's Application to cancel it as this request is now moot.

I then asked the Tenant to present evidence with respect to her Application for the Landlords to comply with the Act and for the Landlords to complete repairs to the rental unit. The Tenant confirmed that the issue with respect to her Application was limited to repairs of the hot water tank only.

The Tenant referred to a previous decision that had been made during a hearing that took place between the same parties on September 12, 2016, the file number for which is noted on the front page of this Decision. That hearing heard in part, the Tenant's Application for the Landlord to complete repairs which included investigation and repair of the hot water tank. After hearing the parties' evidence during that hearing, that Arbitrator concluded that the Tenant had not co-operated with the Landlords in their efforts to complete repairs to the rental unit; however, based on a mutual agreement the Landlords committed to having the repairs remedied on September 14, 2016.

The Tenant confirmed the Landlord had attended the rental unit with a handyman on September 14, 2016 to complete repairs to the rental unit. The Tenant testified that while the Landlord's handyman drained the hot water tank of sludge and sediment, this had made the issue of adequate hot water better. However, there was still not enough hot water and sediment continued to collect on her laundry, dishes, and in her toilet.

The Tenant testified that she sent the Landlords two letters by regular mail on October 5 and November 10, 2016 which she provided into evidence. The Tenant acknowledged that it would have been better had she sent these by registered mail but submitted that there was no response from the Landlords to her letters requesting that the hot water tank be re-examined and fixed. The Tenant testified that she sent the Landlords her December 2016 rent by e-transfer and put a note in the memo section that the hot water tank still needed to be fixed. The Tenant explained the Landlords then made arrangements to come to the rental unit on December 5, 2017 at 6 p.m. to look at the hot water tank but failed to attend. The Tenant stated that when she asked the Landlords why they had failed to appear, they replied that they did but no one was present, which was false. The Tenant explained that on the same day she was served with the 1 Month Notice.

The male Landlord testified that he had attended the rental unit on September 19, 2016 with his handyman to complete repairs to the rental unit. The male Landlord testified that he was of the understanding that there were no further issues remaining.

The male Landlord denied receipt of the Tenants two letters submitting that these had been falsified in an effort to show the Landlords had been put on notice of the ongoing

hot water tank issue. The male Landlord explained the Tenant had engaged in extensive e-mail and text message communication with the Landlords prior to all of these disputes and had register mailed documents also in the past. However, the Tenant chose to instead use regular mail as a way to claim the two letters were served.

The male Landlord acknowledged the Tenant had alerted him to an issue with the hot water tank at the rental unit through her payment of rent but submitted that this was not the proper way to inform a landlord of such a serious issue. The male Landlord confirmed that he had attended the rental unit on the agreed date of December 5, 2017 at 6:00 p.m. but the Tenant was not present. The male Landlord submitted that he had already had the hot water tank issue investigated and remedied by his handyman and that the Tenant had also previously had a plumber to examine the hot water tank which indicated the hot water setting had been checked.

The Tenant testified that she had called the Landlord twice on January 17, 2016 to ask that he have the hot water tank looked at but the Landlord refused. The Tenant stated that she employed a plumber to inspect the rental unit after January 17, 2016 who informed her that the hot water tank was so old that any malfunction could not be investigated. The Tenant did not provide any report or documents to corroborate this testimony citing the fact that the invoice for the plumber contained her credit card details which she did not want to give to the Landlords or block out for fear that they would claim it was fraudulent.

The Landlords denied that the Tenant called them about the hot water tank stating that they have attempted to call the Tenant previously but she fails to answer the phone insisting that communication should not take place verbally. The Landlord submitted that they were only learning of the continued alleged problems with the hot water tank through the Tenant's Application.

However, the Landlords stated that they would be willing to have the hot water tank looked at by a professional plumber, who was not the handyman, but that the Tenant needed to ensure they were given proper access to the rental unit. The Landlords stated that the Tenant had a dog in the rental unit which needs to be kenneled but consistently barks when there is someone in the rental unit which causes disturbance to other residents and impedes the purpose of the entry.

The Tenant agreed with the Landlords during the hearing, that the Landlords will employ a professional licenced plumber to attend the rental unit with the male Landlord on February 22, 2017 at 5:30 p.m. The Tenant agreed that she will ensure her dog is kenneled prior to and during the inspection.

### Analysis

Having examined the evidence before me I make the following findings. I find the Tenant has failed to establish with sufficient evidence that after the Landlords had made repairs to the rental unit on September 19, 2016, the issue with the hot water tank remains unresolved. The Tenant failed to establish sufficient independent or expert evidence, such as a verifiable report from a professional plumber, that there is a repair required of the hot water tank.

Furthermore, I am not satisfied that the Tenant properly put the Landlord on notice of the alleged ongoing issue with the water tank. While the Tenant may have served the Landlord with the two letters by regular mail, which is an acceptable method of service under the Act, the Landlords denied receipt of these letters. Therefore, in the absence of any evidence to corroborate the service of these letters, I am not satisfied that the Landlords were put on notice through these two letters.

I also find that the parties' evidence with respect to the alleged attendance or non-attendance on December 5, 2016 by the Landlords and the alleged phone calls made to the Tenant in January 2017, results in one party's word against the other. Based on the foregoing, I find the Tenant has failed to prove the Application for the Landlord to comply with the Act in doing repairs to the hot water tank.

However, I acknowledge that the main goal in this dispute is a repair issue. Therefore, in the alternative, I find that based on the mutual agreement of the parties, the Landlord will attend the rental unit with a licensed plumber on February 22 at 5:30 p.m. The licensed plumber will examine the hot water tank and undertake any necessary investigation to determine if a repair is required. The Landlords are not required to give any notice to the Tenant for this inspection as I order this Decision and the mutual agreement serves as that notice. There is no legal requirement for the Tenant to be in attendance on this date and time but the Tenant is to ensure that the dog is kenneled and does not interfere with the inspection or cause disruption to other residents. As I am not able to force the Tenant to remove her dog from the rental unit for the inspection, I strongly caution the Tenant that to not do so may cause further delay and disputes in this tenancy. The Tenant is also cautioned that if she chooses not to be present during the February 22, 2017 inspection she may instead have an agent present; otherwise the Landlord may enter the rental unit in the absence of the Tenant if there is not threat posed by the Tenant's dog.

Following the inspection, the Landlords will be required to undertake any repairs to the hot water tank that are required and this should be done within an appropriate and

diligent time frame with the required notice pursuant to the Act. The parties are at liberty to make an Application if this issue remains unresolved. I also caution the parties to limit any communication in writing and that parties retain evidence of the manner in which any document is served in this tenancy.

With respect to the Tenant's request to recover the \$100.00 filing fee, I make the following findings. As the Tenant had initially made the Application to dispute the 1 Month Notice and this was withdrawn by the parties due to an error on the part of the Landlords to inform of all the reasons for ending the tenancy, I find the Tenant would be entitled to recover of the filing fee from the Landlords. However, as I made a determination that the Tenant failed to prove the remainder of the Application, I limit the Tenant's claim for the filing fee to \$50.00.

The Tenant may obtain this relief by deducting this amount from her next installment of rent pursuant to Section 72(2) (a) of the Act. The Tenant may want to attach a copy of this Decision when the reduced payment of rent is made.

### Conclusion

The 1 Month Notice was withdrawn. The Landlords will examine the hot water tank and undertake any required repairs with proper notice. The Tenant is awarded half of the filing fee. 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