



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking to cancel a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”), and recovery of the \$100.00 filing fee.

I note that Section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a Notice to End Tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with Section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenants and the Landlord; all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

At the request of the parties, copies of the decision will be e-mailed to them at the e-mail addresses they provided in the hearing.

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

### Issue(s) to be Decided

Is there a valid reason to cancel the 1 Month Notice under the *Act*?

If the Tenant is unsuccessful in seeking to cancel the 1 Month Notice, is the Landlord entitled to an order of possession pursuant to Section 55(1) of the *Act*?

### Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the month-to-month tenancy began May 15, 2017, at a monthly rent of \$1,750.00. Although the tenancy agreement states that rent is due on the first day of each month, the parties agreed in the hearing that rent is actually due on the 15<sup>th</sup> day of each month.

The Landlord testified that the Tenants have breached several material terms of the tenancy agreement by hunting on the property and using the garage for purposes other than the storage of vehicles. As a result, the Landlord stated that they served the Tenants with a 1 Month Notice. The 1 Month Notice in the documentary evidence before me, dated September 14, 2017, has an effective vacancy date of October 15, 2017, and states that the reason for ending the tenancy is because the Tenants have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. Although the Landlord could not recall exactly when the 1 Month Notice was served on the Tenants or how, the Tenants acknowledged receiving it September 17, 2017.

The parties agreed in the hearing that one of the Tenants hunts on the property, however, the parties disagreed about whether or not this is a breach of a material term of the tenancy agreement. The Landlord testified that hunting is not permitted on their property by municipal bylaw and argued that hunting on the property is therefore a breach of a material term of the tenancy agreement as it is expected that Tenants comply with the law. They did not submit any documentary evidence to establish that there is a bylaw in place prohibiting hunting where the rental property is located. The Tenants testified that the rental property is on an agricultural land reserve which permits hunting by bow and arrow, which is the manner in which they hunt on the property. Further to this, the Tenants testified that they were never told they could not hunt on the property and pointed out that the tenancy agreement makes no mention of hunting. When asked, the Landlord acknowledged that they did not advise the Tenants prior to signing the tenancy agreement that hunting was not allowed on the property.

The parties also agreed that the Tenants use the garage on the property as a workshop, however, they disagreed about whether this is a breach of a material term of the Tenancy agreement. The Landlord acknowledged that the tenancy agreement contains no mention of a garage; however, he testified that he spoke with the Tenants prior to the start of the tenancy to make it clear that the garage was only to be used for the storage of vehicles.

Further to this, the Landlord stated that one of the Tenants makes and sells cabinets in the garage which is a breach of the tenancy agreement as the property is not rented or zoned for commercial use. Although the Tenants admitted that one of them sometimes builds and sells cabinetry, they testified that this is a side hobby, not their job or a legitimate business, and denied ever being advised that they were only allowed to use the garage for the storage of vehicles.

The Tenants testified that the Landlord has always known that they stored and used tools in the garage as their signing of the tenancy agreement was contingent upon exclusive use of the garage for this purpose. When asked, the Landlord confirmed that the Tenants requested and were given full use of the garage as part of the tenancy agreement. The Tenants also pointed out that the tenancy agreement makes no mention of the garage or how it is to be used.

### Analysis

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenants were served with the 1 Month Notice on September 17, 2017, the date they acknowledge receiving it.

Section 47 of the *Act* states a landlord may end a tenancy by giving notice to end the tenancy if:

- the tenant
  - (i) has failed to comply with a material term, and
  - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Policy Guideline 8 defines a material term as a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. Policy Guideline 8 states that the party alleging the breach bears the burden of proof and that when determining the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach.

Although the Landlord testified that running a business out of the garage and hunting on the property are illegal, they did not submit any documentary evidence in support of these claims and the 1 Month Notice served on the Tenants by the Landlord relates to a breach of a material term of the tenancy agreement, not illegal activity.

Further to this, I find that these activities are not prohibited under any term at all in the tenancy agreement and that nothing in the written tenancy agreement speaks to any specific use of the garage or hunting on the property. Based on the above, I find that the Landlord has failed to establish, on a balance of probabilities, that using the garage as a workshop, either as a hobby or as part of a business, or hunting on the property, constitute breaches of material terms of the tenancy agreement. As a result, I order that the 1 Month Notice dated September 14, 2017, is cancelled and of no force or effect.

Pursuant to section 72 of the *Act*, the Tenants are also entitled to \$100.00 for the recovery of the filing fee, which I authorize them to deduct from next month's rent.

### Conclusion

I order that the 1 Month Notice dated September 14, 2017, is cancelled and the tenancy will therefore continue in full force and effect until it is ended in accordance with the *Act*.

Pursuant to section 72 of the *Act*, the Tenants are also entitled to deduct \$100.00 from the next month's rent in recovery of the filing fee, as they were successful in their application.

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: December 7, 2017

---

Residential Tenancy Branch