



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC ERP FFT LAT LRE MNDCT

### Introduction

This hearing dealt with an application by the tenants pursuant to the *Residential Tenancy Act* ("the Act") for an order as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause ("1 Month Notice") pursuant to section 47 of the *Act*;
- for a monetary award for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67 of the *Act*;
- to set or suspend conditions on the landlords' right to enter the rental unit pursuant to section 70 of the *Act*;
- to allow the tenants authorization to change the locks to the rental unit pursuant to section 70 of the *Act*;
- to make emergency repairs to the unit, site or property pursuant to section 33 of the *Act*; and
- for a return of the filing fee pursuant to section 72 of the *Act*.

Both of the tenants, and the landlord attended the hearing. All parties present were given a full opportunity to be heard, to present their testimony and to make submissions.

The tenants acknowledged receipt of a copy of the landlords' 1 Month Notice to End Tenancy, while the landlords acknowledged receipt of the tenants' application for dispute resolution. Each party stated they had received each other's evidentiary packages. I find that all parties were duly served with the associated documents in accordance with section 88 & 89 of the *Act*.

### Issue(s) to be Decided

Can the tenants cancel the landlords' 1 Month Notice to End Tenancy? If not, are the landlords entitled to an Order of Possession?

Are the tenants entitled to a monetary award?

Should the landlords be directed to make emergency repairs to the unit?

Should conditions be set on the landlords' ability to access the rental unit?

Can the tenants change the locks to the rental unit?

Can the tenants recover the filing fee associated with the application?

### Background and Evidence

Testimony was presented by both parties that this tenancy began in May 2014. Rent was \$1,872.00 per month, and a security deposit of \$875.00 collected at the outset of the tenancy, continues to be held by the landlords. A second tenancy agreement was signed by the parties in October 2016.

The tenants stated they are seeking to cancel the landlords 1 month notice to end tenancy ("1 Month Notice"), as well as to recover a monetary award. The tenants have said that steps were taken to address the issues identified by them as needing repairs and that they were no longer pursuing this portion of their application. Furthermore, the tenants said that they were planning on vacating the rental unit and were no longer pursuing their application requesting a change to the locks, or setting conditions on the landlords' right to access the rental unit.

The landlords explained that a 1 Month Notice was served to the tenants for the following reasons:

- *Tenants were repeatedly late paying rent*
- *Tenants put the landlords' property at significant risk*
- *Tenant knowingly gave false information to prospective purchaser of the rental unit.*

The landlords said that the tenants were late paying rent in April 2015, January 2016, December 2016, July 2017 and November 2017. The tenants acknowledged paying rent late for all dates listed by the landlords, except for November 2017. After reviewing the details of the November 2017 payment the landlords conceded that rent for November 2017 was not late, and was paid on November 1, 2017, but they argued it was only paid on time after some prompting on their part.

The second portion of the 1 Month Notice served on the tenants' concerns damage to the rental unit which resulted from a flood in the home. The landlords argued that a flood which occurred in October 2017 was the result of tenants' negligence and actions. The landlords said that the tenants had flooded the rental unit by leaving the door open when they returned to the home.

The landlords alleged that the tenants made no efforts to control the flow of water into the home and had purposefully allowed a large amount of standing water to enter the premises. In addition to water being allowed into the premises, the landlords argued that the tenants had a large number of bricks stacked on the side of the house, and a hot tub placed against the side of the home. The landlords argued that these items created a hazard if they were to fall on persons attending the property.

As part of their written submissions, the landlords described the manner in which they suspected the tenants had flooded the unit. They wrote, "A professional, licensed plumber had scoped the drains on October 23, 2017, at our request after the water egress reported by the tenants. There were no blockages found or issues to suggest negligence. Point of fact, the region experienced significant rainfall and flooding as a result. When I attended the house on the night of the water egress; the outside drain was uncovered and there was no standing water in or out of the house/foyer area. This suggests the tenants removed the drain cover to allow water to flow." In addition to these written submissions, the landlords argued that the tenants had failed to maintain the property and allowed numerous leaves and much debris to accumulate on the property, thus covering the drains and putting the property at risk.

The final aspect of the landlords 1 Month Notice detailed comments and actions which the landlords reported the tenants had made to prospective purchasers of the home. The landlords called their real estate agent, M.H. as a witness to these conversations. The landlords argued that the tenants had made comments directly to a prospective home buyer, in front of M.H. which described numerous shortcomings and problems with the property. M.H. testified that the comments reportedly made by the tenants had in fact taken place in his presence. In their written submissions the landlords detailed neglect of the property and direct actions which they claimed the tenants had taken, in an attempt to stifle the sale of the property.

The tenants denied that any of their actions directly led to flooding of the rental unit. The tenants testified that they had returned home to the property on the day of the flood and had discovered standing water in the entrance way. They acknowledged that water came in with the door when they opened it, but dismissed the landlords argument that they had left the door open to purposefully allow water to enter the premises and ruin the unit. The tenants noted that flooding of the rental unit had occurred in the past and as part of their evidentiary package, provided a letter from a neighbour who described past flooding on the property. The tenants described the large number of personal items which they had lost as a result of the flooding and explained that the majority of their monetary award concerned the loss and inconvenience that resulted from the flood. They argued they had been greatly affected by the flood, and had no reason to put the landlords' property at risk.

The tenants did not deny that comments as described by witness had been made on their part but they argued that they were responding to a question posed by a prospective purchaser. The tenants argued that none of the submissions made by the landlords regarding giving false

information to prospective purchasers should be considered, because they argued that the home was sold in December 2017. The landlords did not dispute that the home had been sold.

In addition to an application disputing the landlords 1 Month Notice, the tenants sought a monetary award of \$8,566.89. They said that this amount represented a loss of 700 square feet in the rental unit due to the flooding which had occurred. They said that humidifiers and other restoration work took place in the unit from October 19, 2017 to December 23, 2017. The tenants said they lost the use of one bathroom, that multiple items had to be moved from the bottom floor to the upper floor, and that the restoration company used their bathroom as a storage area. The landlords disputed the disruptions which were experienced by the tenants. They argued that the tenants had exaggerated the scope of the flood and the bulk of the work which was done by the renovation company had taken place in the foyer. They said that the renovation company had attempted to accommodate the family to the best of their abilities but that the owners were limited in their ability to influence scheduled repair work undertaken by the contractors.

### Analysis

I will begin my analysis of the tenants' application by first considering the 1 Month Notice. Following this, I will turn my attention to the tenants' application for a monetary award.

The tenants have applied for cancellation of the landlords 1 Month Notice served on them in October 2017. The reasons cited on this notice were as follows; *Tenants were repeatedly late paying rent, Tenants put the landlord's property at significant risk and Tenant knowingly gave false information to prospective purchaser of the rental unit.*

The landlords argued that the tenants were late paying rent in April 2015, January 2016, December 2016, July 2017 and November 2017. The tenants acknowledged not paying rent on time for the months cited by the landlords but said that rent for November 2017 should not be considered 'late' because it was paid in its entirety on November 1, 2017. The landlords agreed that rent for November 2017 had been paid in its entirety on the 1<sup>st</sup> but they argued that this had only been done after prompting on their part. I find that rent was paid in its entirety for November 2017 on November 1, 2017 cannot therefore be considered late. I will only consider the late payments of April 2015, January 2016, December 2016 and July 2017.

*Residential Tenancy Policy Guideline #38* examines the issue of repeated late payments of rent in detail. It notes, "Three late payments are the minimum number sufficient to justify a notice under these provisions...it does not matter whether the late payments were consecutive or whether one or rent payments have been made on time between the payments. However, if the late payments are far apart, an arbitrator may determine that, in the circumstances, the tenant cannot be said to be repeatedly late." This guideline continues by noting, "A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision."

The landlords have received late payments of rent once in 2015, twice in 2016 and once in 2017, with the most recent late payment being received in July 2017. The landlords waited over three months to issue a notice to end tenancy for repeated late payments of rent after the latest instance of late rent. A period of 10 months passed between the late payment in April 2015 and January 2016 and 12 months passed between the late payments in 2016. I find that the landlords did not act in a timely manner to address their concerns with these tardy payments and have waived their right to enforce this portion of the notice to end tenancy. For these reasons, this portion of the landlords notice is dismissed.

The second portion of the landlords' notice to end tenancy concerns the tenants placing the rental unit at significant risk. The landlords provided oral testimony and written submissions detailing their arguments regarding this portion of their notice. The landlords cited two main factors which led to the issuance of a 1 Month Notice for these reasons; the tenants had purposefully allowed water to enter the premises and flood the unit, and the tenants had created hazards on the property which may lead to an injury of persons on the property.

After considering the oral testimony of both parties and after having reviewed the detailed written submissions of the landlords, I find that the landlords failed to demonstrate that the tenants took actions which put the landlords' property at significant risk. The tenants described the loss of property which they incurred as a result of the flooding, along with the inconvenience they experienced as a result of the flooding and resulting repair work. Additionally, the tenants provided a letter from a neighbour who described past flooding that had occurred on the property. I find it difficult to imagine a scenario where a tenant would purposefully flood their suite, ruin their own belongings and put themselves through months of construction. Based on the evidence presented at the hearing by the tenants, I find that while a flood did occur in the rental unit, it was not the result of any actions taken negligently or maliciously on behalf of the tenants.

The other reasons cited by the landlords concerned safety concerns they had related to bricks which were stacked next to the home, along with a hot tub which was propped against the house. I find that insufficient evidence was presented by the landlords that these items present a *significant risk* to the landlords' *property*. Much of the testimony and the written submissions described fears that the landlords had regarding potential injuries to persons on the property, versus submissions speaking to the manner in which their property may be at risk. For these reasons, I dismiss this portion of the landlords notice.

The final portion of the landlords notice to end tenancy concerns actions and comments purportedly made by the tenants where the tenants knowingly gave false information to a prospective purchaser of the rental unit. The tenants largely agreed with the content of the testimony presented to the hearing by the landlords' witness, M.H.; however, the landlords did not demonstrate how these comments or other actions described prevented the landlords' home from being sold. The tenants provided testimony which was not disputed by the landlords that

the home was sold by witness M.H. (also the landlords real estate agent) in December 2017. I find that in order to rely on this portion of the 1 Month Notice, the landlords must demonstrate that their home remained unsold as a result of the comments and actions of the tenants. This is not the case, and the landlords' sale of the property was not affected by the tenants' comments and actions. For these reasons, this portion of the landlords notice is dismissed.

I find accordingly that the landlords have failed to demonstrate why their 1 Month Notice should not be set aside. The tenants have succeeded in their application to cancel the landlords' 1 Month Notice, and this tenancy shall continue until it is ended in accordance with the *Act*.

The second portion of the tenants' application concerns an application for a monetary award for \$8,566.89.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove their entitlement to a monetary award.

The tenants explained that the number cited by their in their application for a monetary award represented a 40% reduction of rent for the loss of 700 square feet due to the restoration work required in the home following flooding. I find that while the tenants have demonstrated that they have suffered a loss which has stemmed from the loss of their basement, the tenants have failed to justify that they were entitled to a return of 40% of paid rent.

The tenants were without the use of a downstairs bathroom, had increased hydro bills, lived with various tradespeople coming to their home, were required to move items from the downstairs portion of their home to the upper area, and needed to accommodate dehumidifiers and other restoration equipment for a period of just over 9 weeks. This fact was not disputed by the landlords; however, the landlords disagreed with the extent of the inconvenience experienced by the tenants. I find that an award of 40% to be excessive and conclude an award more closely associated with their daily rental rate of approximately \$61/day (\$1872 rent per month divided by 30 or 31 calendar days per month) to be more appropriate. The tenants explained that they experienced dislocation in their home from October 19, 2017 to December 23, 2017, or 66 days. I award the tenants a monetary award of \$660.00 equivalent to a return of \$10.00 per day for the time period for which they were without the use of a bathroom, and lived with the other associated inconveniences.

As the tenants were successful in their application, they may pursuant to section 72 of the *Act*, recover the \$100.00 filing fee associated with the application.

Conclusion

The landlords' 1 Month Notice to End Tenancy is cancelled and is of no force or effect. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenants are entitled to a monetary award of \$760.00, which includes a return of the filing fee. I issue a Monetary Order in favour of the tenants as follows:

Item	Amount
Compensation for loss of amenities	\$660.00
Recovery of Filing Fee	100.00
<b>Total =</b>	<b>\$760.00</b>

The tenants are provided with a Monetary Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenants' application for emergency repairs to the rental unit is withdrawn.

The tenants' applications suspending or setting conditions on the landlords' right to enter the rental unit, and their application allowing them to change the locks to the rental unit are dismissed with leave to reapply.

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: February 2, 2018

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Residential Tenancy Branch