



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

Dispute Codes      CNC, FFT, RP

## Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”), and Order for the Landlord to complete repairs, and recovery of the 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, the agent for the Tenants, the Landlord, and the agent for 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.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter pursuant to the Residential Tenancy Branch Rules of Procedure; However, I refer only to the relevant facts and issues in this decision.

At the request of the Tenants, a copy of the decision will be e-mailed to their agent at the e-mail address provided in the hearing. At the request of the Landlord, a copy of the decision will be e-mailed to them at the e-mail address provided in the hearing.

## Preliminary Matters

### **Request to Join Applications**

At the outset of the hearing the agent for the Landlord stated that since the Tenants filed their aApplication, the Landlord has also filed a claim in relation to this tenancy, which is

set to be heard on March 15, 2018. The agent for the Landlord requested that the matters be joined and that the Landlord's claim be brought forward and heard alongside this matter. The Landlord's application was filed on January 18, 2018, seeking retention of the security deposit and a Monetary Order and for unpaid rent, an Order of Possession, and recovery of the filing fee. The Agent testified that copies of the Application and Notice of Hearing were sent to each of the Tenants by registered mail on January 25, 2018.

The Tenants objected to the Landlord's request stating that they had not received either a notice to end tenancy in relation to the non-payment of rent or the above noted documents.

Section 2.10 of the Rules of Procedure states that applications for Dispute Resolution may be joined and heard at the same hearing so that the dispute resolution process will be fair, efficient and consistent. It also states that in considering whether to join applications, the Residential Tenancy Branch (the "Branch") will consider the following criteria:

- Whether the applications pertain to the same residential property or residential properties which appear to be managed as one unit;
- Whether all applications name the same landlord;
- Whether the remedies sought in each application are similar; and
- Whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of fact or law in resolving each application.

Having reviewed both applications, I note that although the Landlord's application also relates to a notice to end tenancy, it relates to a different notice to end tenancy than the one disputed by the Tenants as well as a monetary claim regarding the non-payment of rent. Although the applications both pertain to the same residential property and name the same landlord, the remedies sought in each application are different, as are the facts to be considered. Further to this, I note that copies of the Landlord's application, the Notice of Hearing, and the Landlord's evidence were not served on the Tenants at least 14 days before the hearing in accordance with Rules of Procedure. As a result, I denied the request from the Landlord's agent to join the Landlord's application with the Tenants' application in hearing.

### **Matters Dismissed**

In addition to seeking cancellation of the One Month Notice, the Tenants also sought an Order for the Landlord to complete repairs to the rental unit. Section 2.3 of the Rules of Procedure states that claims made in an application must be related to each other and

that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim in this hearing relates to the end or continuation of this tenancy and I note that the parties were given a priority hearing date in order to address the question of the validity of the One Month Notice. As the Tenants' claim for repairs is unrelated to the One Month Notice, I exercise my discretion to dismiss this claim with leave to re-apply.

### **Settlement Discussed**

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

### **Issue(s) to be Decided**

Are the Tenants entitled to an Order cancelling the One Month Notice under the *Act*?

If the Tenants are unsuccessful in seeking to cancel the One Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the *Act*?

### **Background and Evidence**

The Landlord provided significant testimony regarding her dealings with the police in relation to disturbance calls from the neighbours, an incident involving a broken window at the property, and suspected illegal and drug related activity being conducted by the Tenants in the rental unit. The Landlord also testified that the Tenants have permitted unknown people into the unit, allowed two large dogs on the property without her consent and made unapproved changes to the property such as adding security cameras to the front door and bolting the back door shut.

The Landlord testified that as a result of the above, a One Month Notice was posted to the door of the Tenants' rental unit in the presence of police on November 17, 2017.

The One Month Notice in the documentary evidence before me, dated

November 17, 2017, has an effective vacancy date of December 17, 2017, and lists the following reasons for ending the tenancy:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk;
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property;
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; and
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property.

The Tenants acknowledged receiving the One Month Notice from their door on or about November 17, 2017, and denied the allegations made by the Landlord. The Tenants testified that there is no illegal activity occurring in the home or on the premises and that the property is in immaculate condition inside and out. The Tenants acknowledged that there was an incident involving a broken window but testified that a rock was thrown through the window by an unknown person on Halloween which they themselves reported to the police. The Tenants also acknowledged installing security cameras without the Landlord's consent; however, they testified that this was done as a result of the rock-throwing incident and that they had the work professionally completed by the same company that installed the security system for the Landlord. The agent for the Tenant also noted that the Tenants have not been arrested, nor has any documentary evidence been submitted in support of the Landlord's allegations regarding illegal activity or any of the other grounds for ending the tenancy listed on the One Month Notice.

### 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 One Month Notice on November 17, 2017, the date they acknowledge receiving it.

The ending of a tenancy is a serious matter and when a tenant disputes a notice to end tenancy, the landlord bears the burden to prove they had sufficient cause under the *Act* to issue the notice. Both parties provided contradictory affirmed testimony and aside from the One Month Notice and the copy of the tenancy agreement submitted by the Tenants, there was no documentary evidence before me for consideration in relation to the reasons given by the Landlord for ending the tenancy in the One Month Notice. Having carefully reviewed the evidence before me from both parties, I find that the Landlord has failed to establish, on a balance of probabilities, that they had cause under section 47 of the *Act* to end the tenancy and I therefore order that the One Month Notice dated November 17, 2017, is cancelled and of no force or effect. As a result, the tenancy will continue until it is ended in accordance with the *Act*.

Pursuant to section 72 of the *Act*, I also find that the Tenants are entitled to recover the \$100.00 filing fee, which I authorize them to deduct from the rent.

### Conclusion

I Order that the One Month Notice dated November 17, 2017, is cancelled and that the tenancy continue in full force and effect until it is ended in accordance with the *Act*.

I also Order the Tenant's to deduct \$100.00 from the rent in recovery 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: February 5, 2018

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Residential Tenancy Branch