



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC MNDCT OLC RP ERP PSF FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice") pursuant to section 46; a monetary order for compensation for loss under the Act, regulation or tenancy agreement pursuant to section 67; an order requiring the landlord to comply with the Act pursuant to section 62; an order that the landlord provide services or facilities required by law pursuant to section 65; an order that the landlord make repairs to the rental unit pursuant to section 33; authorization to recover the filing fee for this application pursuant to section 72. The tenant withdrew their application regarding emergency repairs.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenant's Application for Dispute Resolution package and additional documentary evidence. The tenants confirmed that they received the landlord's 1 Month Notice to End Tenancy on November 17, 2017 when it was served to them personally.

### Issue(s) to be Decided

Should the landlord's 1 Month Notice to End Tenancy be cancelled or is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary order against the landlord?

Is the tenant entitled to an order for (emergency) repairs?

Is the tenant entitled to an order that the landlord comply with the Act?

Is the tenant entitled to an order that the landlord provide services/facilities required?

Is the tenant entitled to recover the cost of the filing fee from the landlord?

### Background and Evidence

This tenancy began in December 2013 as a month to month tenancy. There was no written tenancy agreement between the parties. The current rental amount is \$750.00 payable by the tenants on the 15<sup>th</sup> of each month. The landlord continues to hold a \$350.00 security deposit paid by the tenants at the outset of this tenancy. The landlord sought an Order of Possession if the tenant is unsuccessful in applying to cancel the 1 Month Notice.

The landlord issued a 1 Month Notice to End Tenancy to the tenants on November 17, 2017. The landlord indicated the following grounds for issuing the notice;

- *Tenant is repeatedly late paying rent.*
- *Tenant has allowed an unreasonable number of occupants in the unit/site*
- *Tenant or a person permitted on the property by the tenant has:*
  - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
  - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *Tenant has engaged in illegal activity that has, or is likely to:*
  - *damage the landlord's property;*
  - *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord...*

The landlord testified that the tenant the tenant has repeatedly paid later rent in both October 2017 and November 2017. She testified that she does not keep a log of the date rent is paid by the tenants and she does not issue receipts. She testified that she was relying on her memory with respect to the late rent payment as well as her recorded communications with the tenants regarding rent. She testified that she is always "chasing the tenants down to get the rent" because they are often just a little bit late.

The landlord testified that the tenant runs an unauthorized business on the property which puts the property of the landlord at risk as neither the tenant nor the landlord are sufficiently insured for business use. She testified that this business use includes Tenant HB's tutoring business. The landlord testified that there are many young people coming to the rental unit for tutoring services. The landlord provided a photograph of one person she believed was a tenant's student at their door.

The landlord testified that the police had to attend the rental property in 2016 in relation to a dispute between the tenants.

Tenant SB testified that he paid the landlord in cash in full every month of the tenancy on the 15<sup>th</sup> of the month. He testified that, after the landlord made this application, he attempted to pay the landlord by cheque but she refused to accept anything but cash. The landlord confirmed that she does not want any other payment than cash. The landlord denies refusing payments from the tenants.

The tenant SB testified that he uses his computer at home for business purposes but also has a separate office space. The tenant SB testified that his wife (co-tenant – Tenant HB) doesn't tutor out of her home: she tutors online, through telephone calls and in person at other public locations. The tenant testified that he purchased office space to ensure the landlord's concerns about insurance were addressed.

The tenant provided undisputed evidence regarding increases to the rental amount for their unit. He testified that the landlord raises the rent in an amount that exceeds the annual allowable amount under the Act. He testified that his rent was \$700.00 and in October 2016, the rent amount was increased to \$750.00. The tenant testified that in August 2017, his rent was increased by another \$50.00 to \$800.00 per month. The landlord's agent testified that the landlord did not intentionally increase beyond the allowable amount – that she was unaware of the guidelines for rental increases. The landlord testified that she has unduly increased the rent, she will reimburse the tenants.

The tenants provided undisputed testimony that the landlord no longer provides the laundry facilities that were available earlier in the tenancy. The tenant applied to have the laundry facilities reinstated. The landlord simply that, since 2016 when the police were called to her premises, she does not wish the tenants to have access to the laundry facilities.

The tenants applied for emergency house repairs including an inspection for black mold in the rental unit. The tenants are certain the black mold exists. The landlord testified that the tenants have never mentioned black mold in the unit prior to this hearing. The landlord's agent stated that laundry was never included in the unit rental. The landlord testified that, at the outset of the tenancy, the tenant asked if she could do laundry once per week and, at that time, "as a courtesy", the landlord agreed. The landlord testified that she re-evaluated whether or not the tenants should be allowed to use her laundry when Tenant SB became argumentative and difficult to deal with.

The tenants applied for emergency repairs to the stove/oven in the rental unit. Tenant HB testified that the hood vent has some kind of leak that needs to be addressed and only 1 burner out of 4 on the stove currently works. The landlord responded that she has attempted to make repairs to the rental unit based on the tenants' verbal requests. She testified that the tenants have not put their requests in writing and, when she attempts to address the repairs, she is unable to get access to the rental unit to do so.

The tenants also applied for an order that the landlord clean their carpets. They submitted that the landlord is responsible for cleaning the carpets in the rental unit and has not done so since the tenants moved in.

The tenants also sought \$371.00 for the effects of the condition of the unit on the tenants' daughters' health as well as their costs for paying at a laundromat for laundry. They submitted laundry receipts totalling \$190.00.

The landlord's agent argued that the tenancy should end as the tenancy-landlord relationship has broken down and that Tenant SB's conduct has impacted the landlord's lawful right to quiet enjoyment.

### Analysis

When a tenant applies to cancel a notice to end tenancy the burden shifts to the landlord to prove that the issuance of the notice to end tenancy is both valid and justified. The tenants agree that they received a 1 Month Notice to End Tenancy however they dispute the grounds upon which the landlord relies. The landlord relied on all of the following grounds in issuing her Notice to End Tenancy and requesting an Order of Possession:

- *Tenant is repeatedly late paying rent.*
- *Tenant has allowed an unreasonable number of occupants in the unit/site*
- *Tenant or a person permitted on the property by the tenant has:*
  - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
  - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *Tenant has engaged in illegal activity that has, or is likely to:*
  - *damage the landlord's property;*
  - *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord...*

As evidence to support her position that the tenants failed to pay rent on time and in accordance with the Act on at least 3 recent occasions ("repeated late payment of rent"), the landlord did not submit any documentary evidence. The tenants dispute that they have failed to pay rent except when the landlord refused to accept rent. I accept the testimony of both tenants that they have continued to pay rent (and the landlord's rental increases) in accordance with the requirements of their tenancy agreement (15<sup>th</sup> of each month) and with the Residential Tenancy Act. Therefore, I find that the landlord has not proved this ground to end the tenancy.

The landlord provided undisputed sworn testimony that both tenants operate businesses from their home. Tenant SB testified that any misunderstanding with respect to having the home business has been rectified by his acquiring office space. The tenants both testified that Tenant HB does not work out of her home tutoring. I accept the testimony of the tenants with respect to their business. Further, the landlord provided minimal evidence of an ongoing business at the rental unit relying heavily on a photograph of one young woman at the rental unit door. Therefore, because I accept the testimony of the tenants, and find that the tenants have addressed this issue raised by the landlord prior to this hearing, I find that the landlord cannot rely on this ground to end the tenancy.

The landlord relied on her own lack of quiet enjoyment as a result of the tenants' disruption on a date in 2016 when the police attended the residence. Under this ground to end a tenancy, the landlord claims that the tenant(s) have either significantly interfered with or unreasonably disturbed another occupant or the landlord; OR seriously jeopardized the health or safety or lawful right of another occupant or the landlord. I find that this particular incident is both isolated (one event) and dated. Therefore, I find that the landlord cannot rely on this ground to end the tenancy.

The landlord listed as a ground to end the tenancy that the tenant has allowed an unreasonable number of occupants in the unit/site. At the hearing, the landlord testified that the tenants have children in the rental unit. I find that the children in the unit do not create an unreasonable number and have not been an issue identified by the landlord to the tenant prior to this Notice to End Tenancy. Therefore, I find that the landlord cannot rely on this ground to end the tenancy.

The landlord also relied the ground that the tenant has engaged in illegal activity that has resulted in or will likely result in either: *damage the landlord's property; or adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.* When the landlord alleges that the tenant(s) has engaged in illegal activity,

the landlord has the burden of proving that the activity was illegal and should be prepared to establish the illegality by providing to the arbitrator and to the other party a copy of the relevant rule or legislation in accordance with the Rules of Procedure. The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offence under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

In this case, the landlord did not present sufficient evidence to establish that the tenant has engaged in illegal activity. In fact, when asked by the landlord the landlord stated that there must be something they are currently in violation of but was unable to identify any particular legislation, bylaw or other rule that the tenant violated. I will not consider illegal activity as a ground to end this tenancy: I dismiss the landlord's application on this ground, as well. I find that the tenancy shall continue.

As part of the tenants' application, the tenants requested an order that the landlord comply with the Act and provide laundry facilities. I note that the landlord acknowledged she had allowed laundry facilities at the outset of this tenancy and for an extended period of time after that. It was only in 2016 when the landlord determined that based on her own judgements of the tenant's behaviour she would no longer provide laundry facilities to the tenants. That decision is not within the purview of the landlord during the course of this ongoing tenancy. I refer the landlord to section 27 of the Act that reads as follows,

### **Terminating or restricting services or facilities**

**27 (1)** A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
- (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Based on section 27 of the Act and the landlord's obligation to provide laundry facilities or reduce rent to compensate for the termination of laundry facilities, I order that the landlord allow the tenant HB access to the laundry unit a minimum of 2 regular days per week for a minimum of 6 designated hours each day.

The tenants also applied for emergency repairs. According to both the Residential Tenancy Policy Guideline No. 1, carpet cleaning is the responsibility of the tenant during the course of the tenancy and the responsibility of the landlord prior to the tenancy and, in some cases, at the end of the tenancy. Therefore, I dismiss the tenant's application to have the landlord clean their carpets.

Section 23 and 33 address repairs and emergency repairs and particularly the obligation of the landlord and tenant with respect to repairs.

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Based on the requirement of section 32 of the Act, that the landlord maintain the property in a manner that complies with health and safety standards and based on the tenant's allegations that there is mold in the rental unit, I order the landlord and tenant to split the cost of a qualified mold inspector. The inspection will take place on or before April 30, 2018. Any action necessary as a result of the inspection are required to begin by May 30, 2018.

The tenants also applied for repairs of the oven and stove. The tenants provided undisputed testimony that they have requested repairs to the oven and stove. Therefore, I order that the landlord make investigation and repair as needed to the oven and stove, including the hood vent by March 31, 2018.

The tenants also applied to have a determination made with respect to their rental amount. Based on the information that I was provided and the materials submitted, the

landlord has increased the tenants' rent beyond the annual allowable amount for the previous two years. I understand, as a result of submissions by her lawyer, that the landlord is likely unaware of some of the rules regarding rent increases and other obligations of a landlord. However the landlord's lack of knowledge does not negate her obligation as a landlord.

With respect to the amount of rent owed at the rental unit, I provide the following information and order,

- 2016 rent was increased in October 2016 from \$700.00 to \$750.00
- The allowable annual rental increase for 2016 was 2.9 %
- 2017 rent was increased in August 2017 from \$750.00 to \$800.00
- The allowable annual rental increase for 2017 was 3.7%
- The annual rent increase must occur 12 months from the previous rent increase
- The annual rent increase requires 3 months' notice to the tenants prior to the implementation of the increase.

If the landlord had provided the annual allowable increase as she had intended, the tenants' 2016 rent would have increased from \$700.00 to \$720.30. If the landlord had increased the tenants' 2017 in accordance with the Act as she intended, the tenants would have received a rental increase from \$720.30 to \$746.95. I provide a table below to show my findings regarding the payment of rent and to address the additional rent increase implemented by the landlord in error.

<b>Rent increase paid by Tenants</b>	<b>Amount paid</b>	<b>Corrected Amount</b>	<b>Excess Amount</b>
October 2016	\$750.00	\$720.30	\$ 29.70
November 2016	750.00	720.30	29.70
December 2016	750.00	720.30	29.70
January 2017	750.00	720.30	29.70
February 2017	750.00	720.30	29.70
March 2017	750.00	720.30	29.70
April 2017	750.00	720.30	29.70
May 2017	750.00	720.30	29.70
June 2017	750.00	720.30	29.70
July 2017	750.00	720.30	29.70
August 2017	800.00	720.30	79.70
September 2017	800.00	720.30	79.70
October 2017	800.00	746.95	53.05



November 2017	800.00	746.95	53.05
December 2017	800.00	746.95	53.05
January 2017	800.00	746.95	53.05
February 2017	800.00	746.95	53.05
<b>Total Overpayment of rent</b>	<b>\$13100.00</b>	<b>\$12378.35</b>	<b>\$721.65</b>

Based on the annual allowable rent increases and the correction of the amount that the landlord was entitled to increase the rent, the tenants overpaid rent from October 2016 to the date of this hearing by a total of \$721.65. Therefore, I issue a monetary order to the tenants in the amount of \$721.65. I decline to consider a rent reduction as the tenants may choose to vacate the rental unit, regardless of this application.

Based on the 7 receipts submitted by the tenants, their costs, at minimum have been \$190.00 to take their laundry out of the home. As I have found that the landlord has restricted the laundry access unduly, I find that the tenants are entitled to recover the \$190.00 spent on laundry services.

As the tenants were successful in their application to cancel the notice to end tenancy and seek repairs as well as to determine the amount of rent for their unit, the tenants are therefore entitled to the \$100.00 filing fee for this application. Including this filing fee, the laundry expenses and the rent increase overpayment, the tenants are entitled to an award totalling \$1011.65.

### Conclusion

I grant the tenant's application to cancel the Notice to End Tenancy. The tenancy shall continue.

I issue a monetary order to the tenants in the amount of \$1011.65.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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.

I order that the landlord provide Tenant HB with access to the laundry facilities a minimum of two days per week at 6 designated hours minimum.

I also order that the landlord I order the landlord and tenant to split (in half) the cost of a

qualified mold inspector. The inspection will take place on or before April 30, 2018. I order the landlord to begin any action necessary as a result of the inspection by May 30, 2018.

Finally, I order that the landlord investigate and repair as determined the oven and stove, including the hood vent by March 31, 2018.

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 19, 2018

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Residential Tenancy Branch