



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, MNDCT, OLC, ERP, RP, PSF, AS

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs and emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- an order allowing the tenants to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenants confirmed that Landlord JJ (the landlord) handed them the 2 Month Notice on January 1, 2018, I find that the tenants were duly served with that Notice on that date in accordance with section 88 of the *Act*.

The landlord confirmed that the tenants handed him a copy of their dispute resolution hearing package on or about January 4, 2018. I find that this package was duly served to the landlord on that date in accordance with section 89 of the *Act*.

Both parties confirmed that they had received one another's written and digital evidence. I find that the parties' evidence was served to one another in accordance with section 88 of the *Act*.

At the beginning of the hearing, I noted that I would do my best to consider as much of the tenants' application as possible during the time allotted for this hearing. I advised the parties that I might exercise the discretion outlined in the Residential Tenancy Branch's Rules of Procedures (Rule 2.3) to consider the most pressing of the issues identified in the tenants' application, the application to cancel the landlord's 2 Month Notice and any emergency or other repairs that would need to be undertaken in the event that the landlords' 2 Month Notice were cancelled.

### Issues(s) to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession? Should any orders be issued to the landlords requiring them to repair or maintain the rental unit in accordance with the *Act* or in accordance with the expectations of the tenants when they entered into this Residential Tenancy Agreement? Should any orders be issued at this time against the landlords for any of the items requested in the tenants' application entitled to a monetary award for unpaid rent?

### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, digital evidence, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

Both parties confirmed that they signed a one-year fixed term Residential Tenancy Agreement (the Agreement) and Addendum on July 30, 2017 for the basement unit of this two unit property. The landlords live in the residence above the tenants. According to the terms of the Agreement, the tenancy is to run from August 1, 2017 until July 31, 2018. Monthly rent for this rental unit is set at \$1,500.00, payable in advance on the first of each month, plus 45% of the gas and hydro for this property. The landlords continue to hold the tenants' \$750.00 security deposit and \$750.00 pet damage deposit, both paid when this fixed term tenancy Agreement was signed.

The landlords' 2 Month Notice, entered into written evidence identified the following reason for seeking an end to this tenancy:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

Although the 2 Month Notice identified February 28, 2018, as the effective date to end this tenancy, I advised the parties that the earliest possible date that a 2 Month Notice issued on January 1, 2018, even for a month-to-month tenancy would be March 31, 2018. For a fixed term tenancy Agreement such as this one, the earliest effective date to end the tenancy would be July 31, 2018, the final day of this fixed term tenancy.

At the hearing, the landlords' son, Advocate WNJ, testified that the 2 Month Notice was issued so that he could move into the rental unit. WNJ said that they worked and lived in Calgary and were planning to move to this rental unit in a municipality in the Lower Mainland in March. WNJ said that they were planning to take a one month vacation in the Lower Mainland, and pursue working arrangements in the Lower Mainland after that. WNJ said that they also planned to continue working and living in Calgary, and that they would use the Lower Mainland residence to do some work there, as well. WNJ provided no explanation as to why they required this three bedroom living unit, and confirmed that they had nothing to demonstrate that they were pursuing work in the Lower Mainland at this time. WNJ also asked for consideration that the tenants had breached material terms of their Agreement, another factor in the landlords' issuance of the 2 Month Notice. Landlord JJ (the landlord) said that he had been uncertain as to whether to issue a 1 Month Notice to End Tenancy for Cause (a 1 Month Notice) or the 2 Month Notice.

Tenant MJ (the tenant) testified that the parties have signed a one-year fixed term tenancy agreement that commits the landlord to renting the premises to the tenants until July 31, 2018. The tenants maintained that the landlords could not issue a 2 Month Notice that would end the tenancy before July 31, 2018, the scheduled end date to this tenancy.

The tenants applied for a monetary award of \$16,932.00. This amount included requests for the recovery of rent paid for services and facilities that they expected to receive when they commenced this tenancy, but which they maintained they have not been provided. They claimed that there had been a loss in the value of their tenancy. Included in their application for a monetary award was a loss in the value of their tenancy from March 1, 2018, until July 31, 2018, in the event that the landlords' 2 Month Notice were not cancelled.

The parties agreed that the tenants have not paid their monthly rent for February 2018, as section 51 of the *Act* allows tenants to withhold paying rent for one month when tenants receive a 2 Month Notice from a landlord.

The parties presented sworn testimony and some written evidence regarding the tenants' claim that the landlords have failed to adequately address their concerns about a rodent infestation in this rental property since the tenants first raised this with the landlords in early August 2017, shortly after this tenancy began. The tenant testified that after raising concerns about rodent droppings and access points to the rental unit that were uncovered and allowed rodents to enter the rental unit, the tenant conducted an inspection of the premises with the landlord during the first week of August. The tenant testified that little has been done to address these concerns, other than the landlord's placement of some rocks around open locations to prevent access to the rental unit in some areas and the landlord's placement of some tape in the ceiling to reduce entry points there. The tenant testified that these ongoing concerns have not been addressed, and the landlords have refused to take effective professional pest control action to resolve this problem.

The tenant gave undisputed sworn testimony that the gas oven became inoperative as of September 25, 2017, when an “explosion” occurred. The tenant said that the air cooker provided by the landlord in its place is inadequate to use as a replacement for the oven. The tenant confirmed that the stove remains operational.

The landlord maintained that the gas oven was working well when this tenancy began and that the tenants broke the oven. The landlord’s representatives initially maintained that they had provided written evidence in the form of an email or text exchange with the tenants in which the tenants agreed that they would rather use an air cooker provided by the landlords to take the place of the gas oven. After attempts to locate this email and/or text message exchange in the landlord’s written evidence, the landlords’ son said that the landlord was changing his testimony to advise that this was an oral agreement with the tenants. The tenant denied that any such oral agreement was reached, noting that the landlord simply gave the tenants the air cooker and expected them to use it instead of the oven.

In their application and in the tenant’s sworn testimony, the tenants maintained that the addendum that they agreed to at the time they signed the Agreement to refrain from obtaining another roommate contravened the *Act*, and as such, had no legal effect. The landlords entered into written evidence a copy of the Agreement and the July 30, 2017 Addendum to that Agreement. The relevant wording of the Addendum is as follows:

*...Tenants will not sublet the rental unit to another person. The maximum occupancy is two persons (M and P)...*

In their application for dispute resolution, the tenants also sought use of the swimming pool in the backyard of this property. In the Addendum to the Agreement, the tenants gave their written authorization that the “Tenants agree not to use the swimming pool.”

The tenants also maintained that the rental unit as advertised in the original listing of this rental unit on a popular housing website incorrectly described the rental unit as being larger than it actually was. In their written submission, they requested the issuance of a summons or subpoena to the landlords to produce a copy of the original website advertisement of this rental unit.

The tenant also testified at the hearing that the landlords initially refused to issue rent receipts to the tenants. They said that in recent months, the landlord has provided the tenants with rent receipts. The landlord’s advocate indicated that the landlords were willing to issue rent receipts for the remainder of this tenancy.

#### Analysis – Tenants’ Application to Cancel the Landlords’ 2 Month Notice

Section 49 of the *Act* outlines the process whereby a tenancy can be ended for the landlords’ use of the property. The relevant portions of section 49 are as follows:

**49** (1) *In this section:*

**"close family member"** means, in relation to an individual,

(a) *the individual's parent, spouse or child, or*

(b) *the parent or child of that individual's spouse;...*

(2) *Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be*

(a) *not earlier than 2 months after the date the tenant receives the notice,*

(b) *the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and*

(c) *if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.*

(3) *A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit...*

In this case, paragraph 49(2)(c) of the *Act*, as outlined above, specifically prevents a landlord from ending a fixed term tenancy for landlord's use of the property "not earlier than the date specified as the end of the tenancy." The earliest possible date that the landlord could obtain an end to this tenancy pursuant to section 49 of the *Act* would be July 31, 2018, the date when this one-year fixed term tenancy is scheduled to end. Even to end this tenancy on July 31, 2018, in accordance with the 2 Month Notice, I would also have to be satisfied that the reasons cited in the landlords' 2 Month Notice were valid.

In this case, I find that the evidence provided by the landlords falls well short of the standard required to accept that the rental unit is required to house a close family member who intends in good faith to occupy the rental unit. The landlords' son who acted as the landlords' advocate at this hearing testified that they planned to continue working in Calgary and residing in that city, and only needed the rental unit to stay in the Lower Mainland for a one month vacation and to look into the possibility of working in the Lower Mainland on a part-time basis. The landlords' son produced no written evidence whatsoever to document any real intention of relocating to the rental unit or any details that would convince me that this would actually happen if the landlords were granted an Order of Possession pursuant to the 2 Month Notice. The timing of the

landlords' issuance of the 2 Month Notice, shortly after receiving additional complaints from the tenants, and the sworn testimony of Landlord JJ that he did not know whether to issue a 1 Month Notice or a 2 Month Notice, further convinces me that the landlord has insufficient grounds to end this tenancy to complete a temporary relocation of his son from Calgary, even at the end of the fixed term.

I allow the tenants' application to cancel the 2 Month Notice, as paragraph 49(2)(c) of the *Act* prevents the landlords from ending this tenancy on the basis of a 2 Month Notice until July 31, 2018, the same date identified as the end date of this fixed term tenancy. I also allow the tenants' application because I find that the landlords have failed to demonstrate that the rental unit is needed for the purpose stated in the 2 Month Notice. This tenancy continues until ended in accordance with the *Act*.

As this tenancy is continuing, the tenants are responsible for paying their monthly rent in accordance with the terms of their Agreement for February 2018. This rent becomes due upon the tenants' receipt of this decision, subject to the orders I have outlined in the remainder of this decision.

#### Analysis – Tenants' Application for the Issuance of Orders for Repairs and for Rent Reduction

As this tenancy is continuing, there was only enough time at the hearing to hear evidence regarding the most pressing and immediate of the tenants' requests for repairs and rent reduction for this tenancy. I have also reached findings on other issues that would have an impact on this continuing tenancy. Other than the items specifically mentioned below, I have severed the remainder of the items listed in the tenants' application in accordance with Rule 2.3 of the Branch's Rules of Procedure. I do so because there was insufficient time to consider these matters and these requests did not seem to me to be central to the main issue of whether this tenancy would continue, and if so on what basis. The tenants are at liberty to reapply for those items not specifically noted in the remainder of this decision.

Section 32(1) of the *Act* reads as follows:

**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.*

Based on the sworn testimony and written evidence, I find that the landlord has not adequately attended to the concerns raised on a regular basis by the tenants about the rodent infestation in

this rental unit. When it becomes apparent that pest infestation concerns raised by tenants extend beyond what a landlord can undertake to correct them, it is the landlord's responsibility to retain the services of a pest control specialist. This has not occurred with respect to this tenancy. The measures taken thus far by the landlord do not comply with the landlord's responsibilities outlined in section 32(1) of the *Act*.

I order the landlord to retain and pay for the services of a professional and licensed pest control specialist who is to undertake an inspection of this rental property by February 18, 2018. I order the landlord to obtain a written report from that specialist following that inspection, a copy of which I order the landlord to provide in its entirety to the tenants. I also order the landlord to undertake any recommendations designed to address any rodent infestation problems that the specialist identifies as a result of that inspection.

Paragraph 65(1)(f) of the *Act* allows me to issue a monetary award to reduce future rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

I issue the following orders in accordance with paragraph 65(1)(f) of the *Act*:

- In the event that the pest control specialist's recommendations are not completed by the landlords by February 28, 2018, I order the tenants to reduce their next monthly rent due on March 1, 2018 by \$100.00.
- In the event that this problem remains unresolved by March 31, 2018, I order the tenants to reduce rent due for April 1, 2018 by \$200.00.
- In the event that this problem remains unresolved by April 30, 2018, I order the tenants to reduce rent due for May 1, 2018 by \$300.00.
- In the event that this problem remains unresolved by May 31, 2018, I order the tenants to reduce their rent due for June 1, 2018 by \$400.00.
- In the event that this problem remains unresolved by June 30, 2018, I order the tenants to reduce their rent due for July 1, 2018 by \$500.00.
- Should the tenancy continue beyond July 31, 2018, the scheduled end date for this fixed term tenancy and the pest control recommendations not be resolved, the tenants are ordered to reduce their rent by \$500.00 each month until the month after these recommendations are implemented.

I now turn my attention to the tenants' claim that their oven has not been operational since September 25, 2017. I find that the landlords' provision of an air cooker was not the amenity that the tenants could reasonably have expected to have been provided by the landlords in place of the functioning oven that was operational at the time that this tenancy began. For that reason, I order the landlords to retain and pay for the services of a technician who is properly licensed and accredited to service and repair the tenants' gas oven by February 18, 2018.

Sections 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past and future rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.” Section 65 of the *Act* reads in part as follows:

**65** (1) *Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:*

*(c) that any money paid by a tenant to a landlord must be*

*(i) repaid to the tenant,*

*(ii) deducted from rent, or*

*(iii) treated as a payment of an obligation of the tenant to the landlord other than rent;...*

*(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;...*

I accept that the landlords may have needed some time to assess the extent of the repairs required to the tenants' oven. However, by November 1, 2017, I find that the landlords should have been able to assess this situation and undertake repairs so as to restore the tenants' oven to its previous level of functionality. I find that the landlords have not provided sufficient evidence that would demonstrate that there was an actual agreement with the tenants to replace the tenants' oven with an air cooker. As such, I find that there has been a reduction in the value of the tenants' tenancy agreement, which entitles the tenants to a retroactive reduction in their monthly rent from November 1, 2017 until the present.

In accordance with paragraph 65(1)(f) of the *Act*, I order the tenants to reduce a future rent payment by \$200.00 (4 months from November 2017 until February 2018) to reflect the loss of the oven during the past four months of their tenancy.

I issue the following orders in accordance with paragraph 65(1)(f) of the *Act*:

In the event that the oven repairs are not completed by the landlords by February 28, 2018, I order the tenants to reduce their monthly rent due on March 1, 2018 by \$50.00 until the month following the completion of these repairs.

As this tenancy is continuing and to provide clarity to at least some of the concerns raised by the tenants in their application and in the sworn testimony they presented, I have also considered the following assertions and have made final and binding decisions regarding these matters.

I have considered the tenants' claim that the provision in the Addendum they signed preventing them from obtaining another roommate contravenes the *Act*. In this regard, I assume that the tenants are referring to the provisions of section 6(3) of the *Act*, which reads in part as follows:

**6 (3)** *A term of a tenancy agreement is not enforceable if*

*(a) the term is inconsistent with this Act or the regulations,*

*(b) the term is unconscionable,...*

While I have given the tenants' claims careful consideration, I note that the tenants both signed the Addendum with the express provision included that only the two tenants would reside in this rental unit. Having agreed to this contractual term in writing, I find nothing unconscionable about the landlords insisting that only the two tenants whose names appear on the Agreement are to reside in the rental unit, especially given that the landlords reside in the same building upstairs from the tenants. I dismiss the tenants' claim that the landlords are unreasonably refusing to allow them to sublet (or in this case obtain an additional roommate to share their rent) without leave to reapply.

I also dismiss without leave to reapply the tenants' claim that the landlords are somehow contravening their Agreement by refusing to allow the tenants to use their swimming pool. Again, this was a written term of the Addendum signed by the tenants and the landlords when they entered into this tenancy. I find that there is nothing unconscionable about this provision in the Agreement.

I have also considered the tenants request for the issuance of a subpoena or summons to the landlords requiring the landlords to provide the tenants with a copy of the original website advertisement of the rental unit. The tenant confirmed that the tenants inspected the rental unit before they agreed to rent these premises. Based on this testimony, I find that the tenants were fully able to compare any discrepancy between the advertised space and the actual space, and in particular any variation in the size of the rental unit, when they inspected this rental unit before they signed their fixed term tenancy Agreement. Under these circumstances, I find that there is no purpose to be served by obtaining information that first attracted the tenants to visit the rental unit and inspect the size, dimensions and condition of the rental unit they subsequently decided to rent. I deny the tenants' request to issue a subpoena or summons to the landlords as I find nothing in their application would turn on this evidence.

Although the parties presented some limited testimony regarding the heat and insulation in one of the bedrooms, the parties did not agree on the extent to which adequate heat was available in this rental unit. It became apparent that this would require considerable time to assess the written and photographic evidence before any determination could be made regarding this aspect of the tenants' application. As there was not enough time to properly consider this aspect of the tenants' application, I dismiss this aspect of the tenants' application, including any application for a reduction in rent for the inadequacy of the heat, with leave to reapply. In so

doing, I note that I do not consider myself seized of this issue and any arbitrator appointed pursuant to the *Act* would be able to consider this aspect of the tenants' application should they decide to reapply regarding this item. I am also not seized of any of the other aspects of the tenants' application that I have not addressed in this decision and which are dismissed with leave to reapply.

### Conclusion

I allow the tenants' application to cancel the landlords' 2 Month Notice. The landlords' 2 Month Notice is set aside and is of no force or effect.

As the 2 Month Notice is no longer in effect, I order the tenants to pay their monthly rent for February 2018, in accordance with the terms of their Agreement, with the following exceptions. I order the landlord to retain and pay for the services of a professional and licensed pest control specialist who is to undertake an inspection of this rental property by February 18, 2018. I order the landlord to obtain a written report from that specialist following that inspection, a copy of which I order the landlord to provide in its entirety to the tenants. I also order the landlord to undertake any recommendations designed to address any rodent infestation problems that the specialist identifies as a result of that inspection.

I issue the following orders in accordance with paragraph 65(1)(f) of the *Act*:

- In the event that the pest control specialist's recommendations are not completed by the landlords by February 28, 2018, I order the tenants to reduce their next monthly rent due on March 1, 2018 by \$100.00.
- In the event that this problem remains unresolved by March 31, 2018, I order the tenants to reduce rent due for April 1, 2018 by \$200.00.
- In the event that this problem remains unresolved by April 30, 2018, I order the tenants to reduce rent due for May 1, 2018 by \$300.00.
- In the event that this problem remains unresolved by May 31, 2018, I order the tenants to reduce their rent due for June 1, 2018 by \$400.00.
- In the event that this problem remains unresolved by June 30, 2018, I order the tenants to reduce their rent due for July 1, 2018 by \$500.00.
- Should the tenancy continue beyond July 31, 2018, the scheduled end date for this fixed term tenancy and the pest control recommendations not be resolved, the tenants are ordered to reduce their rent by \$500.00 each month until the month after these recommendations are implemented.

I order the landlords to retain and pay for the services of a technician who is properly licensed and accredited to service and repair the tenants' gas oven by February 18, 2018. I order the tenants to reduce a future rent payment by \$200.00 to reflect the loss of the oven during the past four months of their tenancy. In the event that the oven repairs are not completed by the

landlords by February 28, 2018, I order the tenants to reduce their monthly rent due on March 1, 2018 by \$50.00 until the month following the completion of these repairs.

I dismiss the tenants' claim that the landlords are unreasonably refusing to allow them to sublet so they can obtain an additional roommate to share their rent without leave to reapply. I also dismiss the tenants' claim that they should be allowed to use the swimming pool on this rental property. I deny the tenants' request to issue a subpoena or summons to the landlords requiring the landlords to produce a copy of the original advertisement on the rental website that attracted the tenants to the availability of this rental suite.

The remainder of the tenants' application is 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 05, 2018

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Residential Tenancy Branch