



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNC FFT

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant AM primarily spoke for both co-tenants (the "tenant").

As both parties were in attendance service of documents was confirmed. The parties confirmed that the landlord's 1 Month Notice, the tenants' application for dispute resolution and the parties' respective evidence was received. I find that all materials were served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The rental unit is a suite in a detached home. The monthly rent is \$975.00 payable on the first of each month.

The landlord issued a 1 Month Notice on January 1, 2018. A copy of the 1 Month Notice was submitted into written evidence. The reason provided on the 1 Month Notice is that the tenant

or a person permitted on the property by the tenant has put the landlord's property at significant risk. In addition the landlord has written in hand on the 1 Month Notice that they intend to do renovation of the suite for family use. The landlord also testified that the tenants have failed to pay rent for the months of February and March, 2018.

The landlord submitted into written evidence an invoice from a contractor which the landlord claims is for damages that was caused by flooding in the rental building. The landlord testified that the tenant refused to allow the landlord access to the hot water tanker to perform necessary repairs in a timely manner.

### Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch within 10 days of receiving the notice. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenants or a person permitted on the property by the tenants has significantly interfered with or unreasonably disturbed another occupant.

In the present matter the landlord issued the 1 Month Notice on January 1, 2018 and the tenants filed their application disputing the 1 Month Notice on January 10, 2018. I find that the tenants filed their application within the 10 day time limit provided under the *Act*.

I find, on a balance of probabilities, that the landlord has not established cause for ending this tenancy. I find that the landlord's testimony and invoice for repairs conducted at the rental building to be insufficient evidence to conclude that the property is at significant risk due to the tenant's conduct. The landlord claims that the tenants refused to allow them access but I find there is little evidence in support of the landlord's position. The fact that repairs were conducted indicates that the tenants provided access to the rental unit at some point in time. The tenant testified that they allowed the landlord access to the rental unit in a reasonable period.

I find that the landlord has failed to show that the tenants or someone allowed on to the property by the tenants have put the property at significant risk. I do not find that simple water damage to pose a significant risk to the property. In any event, there is no evidence that the water damage was caused or magnified by the tenants.

I find that the landlord has not provided sufficient evidence to show that there is cause for ending this tenancy.

I find the landlord's statements that the tenants have not paid rent for February and March, 2018 to not be supported in documentary evidence and in any event irrelevant to the present application. Similarly, the landlord's testimony that they intend to renovate the rental unit and have their father-in-law occupy the unit does not give rise to a cause for issuing a 1 Month Notice. I find that the landlord's evidence regarding these matters to have no material effect on the issue of the 1 Month Notice.

I do not find that the landlord has provided sufficient evidence to meet the burden of proof that the tenants' actions have given rise to cause to end this tenancy at this time. Consequently, I dismiss the landlord's 1 Month Notice.

As the tenants' application was successful they are entitled to recover the \$100.00 filing fee for this application. As the tenancy is continuing the tenants may withhold \$100.00 from the next monthly rent in satisfaction of this monetary award.

#### Conclusion

The 1 Month Notice of January 1, 2018 is cancelled and of no further effect.

The tenants are authorized to make a one-time reduction of their next monthly rent by \$100.00.

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: March 12, 2018

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Residential Tenancy Branch