



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC OLC FF

### 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 *Act*;
- an Order directing the landlord to comply with the *Act* pursuant to section 62; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both tenants and the landlord attended the hearing. The tenants were represented at the hearing by tenant, G.W. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

The tenants confirmed receipt of the landlord's 1 Month Notice after it was posted on their door on March 6, 2018. Pursuant to section 88 of the *Act*, the tenants are found to have been duly served with the 1 Month Notice.

The landlord confirmed receipt of the tenants' application for dispute along with their evidentiary package. Pursuant to section 88 & 89 of the *Act*, I find that the landlord was duly served with these documents.

### Issue(s) to be Decided

Can the tenants cancel the landlord's 1 Month Notice? If not, is the landlord entitled to an Order of Possession?

Can the tenants recover the filing fee for their application?  
Should the landlord be directed to comply with the *Act*?

### Background and Evidence

The tenants explained to the hearing that this tenancy began in July 2013. Rent is \$1,156.00 and a security deposit of \$550.00 paid at the outset of the tenancy, continues to be held by the landlord.

On March 6, 2018 the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") which the tenants are seeking to have set aside and cancelled. A copy of the 1 Month Notice produced as part of the landlord's evidentiary package showed that the landlord was seeking to end the tenancy on the following grounds –

*The 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;*
- *put the landlord's property at significant risk*

And -

*Tenant has not done required repairs of damage to the unit/site*

Both parties submitted numerous items as part of their evidentiary packages. During the hearing, the landlord summarized her application, arguing that the tenants had been very rude to her on several occasions, had allowed an unauthorized person (tenant D.G.'s son) to live in the rental unit, had been involved in an altercation with a customer attending the commercial premises located below the rental unit, and had allegedly been smoking marijuana and purchasing drugs while on the property.

As part of her evidentiary package, the landlord submitted 65 pages of evidence which included letters in support of her position that the tenants have significantly disturbed her, that they had been rude to her on several occasions, and that a confrontation had occurred in the parking lot between tenant G.W. and a customer of one of the commercial businesses.

The landlord explained that the tenant G.W. had originally lived in the rental unit with tenant, D.G. but because of personal problems, the parties had gone their separate

ways. Tenant G.W. had signed a new tenancy agreement in May 2016 with only himself named as a tenant. Copies of this tenancy agreement were submitted by both the landlord and the tenants. This tenancy agreement showed that rent was \$1,124.20 and that no new security deposit was collected. The security deposit paid in June 2013 continues to be held by the landlord. An examination of a tenancy agreement submitted as evidence by the landlord showed that no pet deposit was ever collected and that no pets were permitted, while a review of a tenancy agreement submitted as evidence by the tenant showed a note that said "bird in cage OK." In addition, I note a further difference and inconsistency in the tenancy agreements submitted. The figure of \$550.00 paid as a security deposit is handwritten in the landlord's copy of the tenancy agreement submitted at the hearing, while it is typed in the tenants' version.

Included with the landlord's copies of the tenancy agreements were addendums signed by the parties which highlighted that smoking was not allowed on the property, that no pets were allowed and that 4 parking stalls on the south side of the building "are for the exclusive use of the commercial tenants and their consumers (sic)."

As part of her oral testimony, the landlord detailed an incident which occurred on August 18, 2017 between tenant G.W. and a customer of a retail business located in the same building. Oral testimony was presented that a disagreement arose because of an issue related to parking. The landlord noted that issues around parking were an ongoing problem on the property.

In addition to this incident which took place on August 18, 2017, the landlord argued that the tenant had broken the terms of his tenancy agreement by allowing D.G.'s son to live in the unit without her written permission, had smoked on the balcony and had parked in stalls marked for the exclusive use of retail customers. The landlord continued by stating that the tenants' ongoing fighting with each other had caused other renters on the premise to vacate the property, and that the tenants had refused to repair drywall and blinds in the home - as they were instructed to do so by the landlord.

The landlords included numerous letters from various persons purportedly familiar with the building and the tenants. Specifically, the landlord included letters dated March 20, 24 and 27, 2018 which alleged that the tenants had been "seen" smoking marijuana "multiple times", described concerns regarding domestic disturbances in which tenants were allegedly involved, and described a garage door that had reportedly been left open by the tenants.

The tenants disputed all aspects of the landlord's 1 Month Notice. The tenants acknowledged that an incident as described by the landlord had occurred on August 18, 2017 but argued that it was an isolated incident which did not involve the landlord or the other occupants of the building, and involved only a customer of the retail unit and tenant G.W.

During the hearing, the tenants explained that the purported "drug dealing" which the landlord witnessed was in fact a pharmacy dropping off D.G.'s prescriptions. A copy of a letter from the pharmacy detailing these drop-offs was submitted as part of their evidentiary package. In addition to this letter, the tenants testified that D.G.'s son had vacated the rental unit in August 2017 and had only been staying there on a temporary basis. The tenants explained that the current tenants occupying the second rental unit in the building had been there for over two years and they enjoyed a good relationship with the people. Finally, the tenants submitted an advertisement from the internet showing the rental unit listed as being available for rent for \$1,700.00. The tenants argued that the landlord was seeking to end their tenancy because of her desire to find renters who were willing to pay more money. When asked to comment on this the landlord admitted that she had posted an ad for the rental unit but said she thought it had been deleted and may have "accidentally" been left online.

The tenants denied that they smoked on the rental property and presented a copy of a tenancy agreement which purported to allow a bird to reside on the property. The tenants said that all repairs which were sought by the landlord had been completed and that any remaining damage was the result of normal wear and tear.

### Analysis

The tenants have applied to dispute a 1 Month Notice issued to them by the landlord for cause. Specifically, the landlord has alleged that the tenants have:

- *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;*
- *put the landlord's property at significant risk*

And –

*Not done required repairs of damage to the unit/site*

I will begin by analyzing the first part of the 1 Month Notice served on the tenants, and then review the notice in the order indicated above.

Section 47(d) of the *Act* states that a tenancy may be ended when the tenant...has significantly interfered with or unreasonably disturbed another occupant and seriously jeopardized the health or safety or a lawful right or interest of another occupant.

Based on the testimony presented at the hearing, it is evident that the parties have a strained relationship that would be described as difficult. Tenant G.W. acknowledged being party to an incident on August 18, 2017 involving a customer attending a retail unit attached to the rental building but denied having any in part other disruptions as described by the landlord. The tenants explained that they enjoy a good relationship with the other residential tenant who occupies the rental building and that there have been no incidents with that person while they have resided in the building.

In addition to the incident of August 18, 2017, the landlord argued that the tenants had purchased drugs, smoked in the rental unit and caused disturbances to the commercial tenants by arguing loudly between one another. Furthermore, the landlord accused the tenants of being very rude to her on several occasions.

The question is therefore whether or not these purported incidents can be classified as being of "significant" or "unreasonable" in nature, and whether they seriously jeopardized the health and safety of the landlord or the other occupants. When a tenant applies to cancel a notice to end tenancy, the burden shifts to the landlord to justify the notice and the end of tenancy based on the grounds supplied.

After reviewing the evidence submitted by the landlord, and considering the testimony presented at the hearing, I find that the landlord has failed to show that the tenants *significantly* or *unreasonably* disturbed the landlord or another occupant, that the tenants put the landlord's property at significant risk, or *seriously jeopardized the health or safety or lawful right of another occupant or the landlord*.

A large volume of testimony and evidence submitted by the landlord concerned her personal relationship with the tenants, and breakdown of this relationship. I find that the incident which occurred on August 18, 2017 to be a one-time event which involved the tenant and a third party, not the landlord or another occupant. Little evidence was presented at the hearing showing that the tenants did not enjoy a reasonable relationship with the other residential occupants of the building and I find that the written submissions provided by the landlord from the commercial tenants describing domestic issues with the tenants to lack detail, particularly around the timing and frequency of

these alleged events. For these reasons, I dismiss this portion of the landlord's 1 Month Notice.

The landlord argued that the tenants had "illegally" allowed tenant, D.G.'s son to live in the rental unit and that this had put their property at significant risk. Furthermore, they produced letters which purported to show the tenants smoking on the deck, tenant D.G. buying drugs, and other activities which the landlord said put the landlord's property at significant risk and seriously jeopardized the health, safety or lawful right of another occupant or the landlord.

After reviewing the letters submitted as evidence by the landlord and considering her oral testimony, I find that insufficient detail was presented how the presence of D.G.'s son put the property at *significant* risk, or jeopardized other occupants or the landlord as described on the Notice to End Tenancy. The letter dated March 27, 2018 says merely that the tenants were "seen" smoking marijuana "multiple times;" however, it does not provide dates on when these events occurred and provides no evidence of marijuana smoke being noticed by any other parties. The letter dated March 12, 2018 is from persons who no longer live in the suite and vacated the property in 2015, while the letter dated March 24, 2018 provides little detail or direction on the manner in which D.G's son, or the tenants were putting the property at *significant* risk or jeopardizing the health, safety or lawful right of any person on the property. For these reasons, I dismiss this portion of the landlord's 1 Month Notice.

The final portion of the landlord's 1 Month Notice concerned repairs reportedly not done to the rental unit. The tenants argued that the repairs requested by the landlord had in fact been completed and that the damage which the landlord wanted them to repair was present in the unit prior to their arrival. Furthermore, they argued that the damage was the result of normal wear and tear during the tenancy. A review of the photos submitted to the hearing revealed no major damage that were not repaired, and the landlord presented very limited evidence that formal demands were made to the tenants regarding repairs to be made in the rental unit. For these reasons, I dismiss this portion of the landlord's notice.

The tenants were successful in cancelling the landlord's 1 Month Notice. This tenancy shall continue until it is ended in accordance with the *Act*. As the tenants were successful in their application, they may recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

I find that the tenants failed to demonstrate how the landlord had not complied with the *Act*, and therefore dismiss this portion of their application.

Conclusion

The tenants' application to cancel the landlord's 1 Month Notice was successful. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenants may recover the \$100.00 filing fee from the landlord. The tenants are ordered to retain \$100.00 from a future rent payment on one occasion in satisfaction for a return 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: April 12, 2018

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Residential Tenancy Branch