



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

CNC DRI ERP FF MNDC OLC RP RR

### **Introduction**

This is the Tenants' Application for Dispute Resolution seeking to cancel a; to dispute an additional rent increase; an Order for emergency and regular repairs; compensation for damage or loss under the Act, regulation, or tenancy agreement; an Order that the Landlord comply with an unspecified section of the Act, regulation or tenancy agreement; and a rent reduction.

Both of the parties attended and gave affirmed testimony at the Hearing which took place by teleconference. The Hearing process was explained and the parties were given an opportunity to ask questions about the process.

It was determined that the Landlord received the Notice of Hearing documents by registered mail on April 16, 2018. It was also determined that the parties received each other's documentary evidence.

Rules 2.3 and 6.2 of the Rules of Procedure provide that issues identified on a single application must be sufficiently related. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply. I find that the Tenant's application to cancel the Notice to End Tenancy is not sufficiently related to the remainder of the issues sought. The Tenant confirmed that the emergency repairs she referred to in her Application are not "emergency repairs" as defined in Section 33 of the Act. The Tenant also confirmed that she wished to proceed with her application to cancel the Notice to End Tenancy. Therefore the remaining issues are dismissed with leave to reapply. The Hearing continued with respect to the Tenants' application to cancel the Notice to End Tenancy only.

It was determined that the surname of the second Applicant/Tenant has been left off the Tenants' Application. The Tenants' Application was amended to reflect the full name of the second Tenant.

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

Is the One Month Notice to End Tenancy for Cause issued April 3, 2018 (the "Notice") a valid notice to end the tenancy?

### **Background and Evidence**

The Landlord served the Tenants with the Notice by leaving it in the Tenants' mail box on April 3, 2018.

The Notice gives the following cause to end the tenancy:

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

### **The Landlord gave the following testimony:**

The Landlord testified that the Tenants are storing uninsured vehicles at the rental unit, contrary to the tenancy agreement. The Landlord also testified that the Tenant is parking three vehicles in the "common area" which is also contrary to the tenancy agreement.

The Landlord stated that the rental unit is a duplex and that the Tenant is not mowing her portion of the yard.

The Landlord testified that the Tenants have not paid rent for two months.

The Landlord provided copies of two notices. The first notice is dated February 3, 2018, and states:

To the tenants of [rental unit]. This is your 1<sup>st</sup> Notice to clean up your yard. So you don't have to park in common driveway.

The second notice is dated March 19, 2018, and states:

To the tenants of [rental unit]. This is your 2nd Notice to clean up your yard. - park in your spaces, not common driveway! – remove 3<sup>rd</sup> uninsured vehicle. It's in your parking space.

The Tenant gave the following testimony:

The Tenant submitted that the yard is a shared yard and that others have access to it. She stated that there is nothing in the tenancy agreement about the Tenant having to maintain the yard.

The Tenant stated that the first notice says nothing about a third vehicle and that she moved the third vehicle on April 1, 2018, after she got the second notice. The Tenant submitted that there was nothing in the tenancy agreement about where the Tenants could park or the number of cars that she could park at the rental property.

The Tenant stated that she has not paid rent because she has been overpaying by \$150.00 a month since July, 2016. The Tenant acknowledged that she does not have an Order from the Director allowing her to deduct money from rent due to the Landlord.

**Analysis**

When a tenant seeks to cancel a notice to end the tenancy, it is a reverse onus situation. In other words, the burden is on the landlord to show that the tenancy should end for the reason(s) provided on the notice to end tenancy.

In this case, the Landlord's reason is that the Tenants breached a material term of the tenancy agreement and that the Tenants did not correct the breach within a reasonable amount of time after being given written notice to do so.

A "material term" is a term that is so important to the tenancy agreement that a breach of that term is sufficient to end the tenancy. Payment of rent is a material term of a tenancy agreement. However, in this case the Landlord did not provide evidence that he gave the Tenants written notice to pay the rent. The Notice is a One Month Notice to End Tenancy for Cause, not a 10 Day Notice to End Tenancy for Unpaid Rent. The Tenants are cautioned that rent must be paid when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, unless the Tenants have a right under the Act to deduct a portion or all of the rent.

The tenancy agreement provided by the Landlord in evidence does not include a term that the Tenants are required to mow the lawn, or to do the yard work at the rental property. The tenancy agreement allows for the Tenants to park two cars, but there is no term in the tenancy agreement with respect to where the Tenants must park their two cars.

For the reasons provided above, I find that the Notice is not a valid notice to end the tenancy and it is cancelled.

### **Conclusion**

The Notice to End Tenancy for Cause issued April 3, 2018, is cancelled. The tenancy will continue until it is ended in accordance with the provisions of the Act.

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: June 20, 2018

---

Residential Tenancy Branch