



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT

### Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause (the "One Month Notice"), pursuant to section 47; and
- repayment of the filing fee, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Tenant J.C. (the "tenant") testified that he personally served the building manager (the "landlord") the notice of dispute resolution package on May 30, 2018. The landlord confirmed receipt of the dispute resolution package. I find that the landlord was served with this package on May 30, 2018, in accordance with section 89 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

### Preliminary Issues

The dispute resolution application states a different first name for tenant D.M. than the 10 Day Notice. Tenant D.M. testified that the first name on the 10 Day Notice is her middle name which she goes by.

Pursuant to section 64 of the *Act*, I amend the application for dispute resolution to state that tenant D.K. is also known as tenant J.K.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice, pursuant to section 47 of the *Act*?
2. If the tenant is not entitled to cancellation of the One Month Notice, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?
3. Is the tenant entitled to repayment of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on April 1, 2015 and is currently ongoing. Monthly rent in the amount of \$765.00 is payable on the first day of each month. A security deposit of \$360.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties but a copy was not submitted for this application.

The landlord testified that she served the tenants a One Month Notice with an effective date of June 30, 2018 by registered mail on May 18, 2018. The One Month Notice is dated May 18, 2018. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. The tenant confirmed receipt of the One Month Notice.

The One Month Notice states the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
  - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
  - Jeopardize a lawful right or interest of another occupant or the landlord.

The landlord testified that since the tenants moved in she has issued the tenants nine written warnings, which were submitted into evidence, due to complaints from other tenants regarding the following:

- late night arguments and yelling;
- feeding birds and rabbits which in turn attracts rats;
- marijuana smoking;
- threatening behavior; and
- one instance of late night loud music.

The tenant testified that he has gotten in arguments with his wife, just like all couples and doesn't think that this should result in his eviction. The tenant testified that he has stopped feeding the birds and rabbits after receiving the warning letters from the landlord. The tenant testified that he only left his music on too loud on one occasion and has not done so since. The tenant categorically denied smoking marijuana.

In regard to the allegation of threatening behaviour, the landlord testified that on two instances she has felt physically threatened by the tenant and on one instance the tenant threatened to cause her bodily harm.

The landlord testified that on August 1, 2015 she was sitting at her desk in the lobby of the rental property when the tenant approached her to discuss one of the letters of complaint he had received. The landlord testified that the tenant appeared intoxicated and that he was yelling and swearing at her and calling her dirty names. The landlord testified that she felt trapped and was afraid that the tenant was going to hit her. The landlord testified that the tenant eventually left without injuring her.

The tenant testified that on August 1, 2015 he recalled going over to the landlord to talk about the letter of complaint that he had received but that he was not threatening the landlord. The tenant testified that he may have been cursing at the landlord but that this is how he often speaks to people when he is upset. The tenant testified that he has never had any intention of physically assaulting the landlord. When asked if he was drinking on August 1, 2015, the tenant testified that he did not remember.

The landlord testified that on June 13, 2018 she was sitting in the lobby with another tenant ("witness P.P.") when the tenant approached her and started swearing and yelling at her about not fixing the front door in a timely manner. The landlord testified that the tenant was extremely intoxicated and very angry with the landlord. The landlord testified that the tenant told her that her "life will be over as you know it" and that he threatened "I'm going to get you – watch me". The landlord testified that she then asked,

“is that a threat?” and the tenant stated “it’s a promise”. The landlord testified that she feared for her safety so she left the lobby to get away from the tenant.

Witness P.P. testified that she witnessed the June incident. Witness P.P. testified that she was sitting with the landlord when the tenant, who was very drunk, started screaming and yelling profanities at the landlord about the broken front door. Witness P.P. testified that the tenant told the landlord that she was “a dead woman” and was “going to die” and that half of the words out of the tenant’s mouth were profanities. Witness P.P. testified that the landlord left the lobby to get away from the tenant and that after the landlord left, the tenant started yelling at her about the landlord. Witness P.P. testified that she was scared that the tenant would become violent with her.

The tenant testified that he was very angry about the front door always being broken and that it was a real security concern of his. The tenant testified that he could not recall the specific words he said to the landlord and to witness P.P. but that he would not have threatened to kill the landlord. The tenant testified that whatever he said, he just meant that he wanted to get the landlord fired because he thinks she does not do a good job.

When the tenant was asked if he was drinking on June 13, 2018 he testified that he could not remember but that he was bipolar and was taking medication for that condition. When the tenant was asked if he was swearing at the landlord and witness P.P. on June 13, 2018 he stated that he could not remember but that he may have as he grew up swearing and that all of his friends swear and that is just how he speaks.

The assistant manager testified that he has observed the tenant’s vulgar vocabulary and threatening behaviour on numerous occasions.

### Analysis

The landlord testified that she served the tenants the One Month Notice by registered mail on May 18, 2018. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. The tenant confirmed receipt of the One Month Notice. I find that the tenants were deemed served with the One Month Notice on May 23, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

On the One Month Notice, the landlord indicated that the reasons the tenants were being evicted were that the tenants or a person permitted on the residential property by the tenants engaged in illegal activity that:

- has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

As the One Month Notice was dated May 18, 2018, the reasons for ending the tenancy were based on the tenants' actions which occurred on or before that date. Therefore, events which occurred after May 18, 2018, such as the June 13, 2018 incident, cannot be considered when determining if the One Month Notice should be upheld.

According to Policy Guideline 32, the term "illegal activity" includes a serious violation of federal, provincial or municipal law, whether or not it is an offense 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.

Policy Guideline 32 goes on to state that the party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

In this case, the landlord did not make any submissions or provide any testimony as to what federal, provincial or municipal law the tenant violated, nor what specific act of the tenant breached the aforementioned laws.

I find that the landlord has not proved that the actions of the tenants from April 1, 2015 to May 18, 2018 have breached any laws. Therefore, I find that the landlord has not met her burden of proof and that the One Month Notice is cancelled and of no force or effect.

Conclusion

I find that the One Month Notice is cancelled and of no force or effect.

As the tenants were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the landlord. Pursuant to section 72 of the *Act*, I find that the tenants are entitled to deduct \$100.00 from August 2018's rent. Rent due on August 1, 2018 is \$665.00.

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: July 18, 2018

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Residential Tenancy Branch