



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL FF OLC OPL MNDC FF

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt with applications from both parties:

The landlord applied for:

- an Order of Possession pursuant to section 47 of the *Act* for Cause;
- a monetary award pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenants applied for:

- cancellation of the landlord's notice to end tenancy pursuant to section 55;
- a return of the filing fee pursuant to section 72 of the *Act*; and
- an Order for the landlord to comply with the *Act* pursuant to section 62.

Both the landlord and the tenants appeared at the hearing. The landlord was represented at the hearing by agent, D.L. Both the landlord and the tenants were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenants confirmed receipt of the Landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice") after it was given to tenant J.C. in person on May 31, 2018. Pursuant to section 89 of the *Act* the tenants are found to have been duly served with the 1 Month Notice in accordance with the *Act*.

The tenants stated that they did not received a copy of the landlord's application for dispute resolution or copies of the evidentiary packages. The tenants said they were unaware that the landlord was seeking an Order of Possession or a monetary award. The landlord explained that he sent individual copies of his application for dispute and evidentiary packages to the tenants by way of Canada Post Registered Mail on June 22, 2018.

Copies of the Canada Post tracking numbers were provided to the hearing. The landlord said that the names used on the Canada Post packages were matched with those on the tenancy agreement signed by the parties. Pursuant to sections 88, 89 & 90 of the *Act* I find that the tenants were deemed served with these documents and the landlord's application on June 27, 2018, five days after their posting.

#### Issue(s) to be Decided

Can the tenants cancel the landlord's notice to end tenancy? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award?

Should the landlord be directed to comply with the *Act*?

Can either party recover the filing fee?

#### Background and Evidence

Testimony provided by the landlord's agent (the "landlord"), confirmed that this tenancy began on January 1, 2016. Rent is currently \$1,612.00 per month, and a security deposit of \$775.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord said he was seeking an Order of Possession after a 1 Month Notice to End Tenancy was served on the tenants on May 31, 2018. The reason cited on the 1 Month Notice was listed as follows:

*Tenant is repeatedly late paying rent*

The landlord said that since July 2017, rent for the property had been paid late seven times. The tenants did not dispute that rent was repeatedly paid late, but they argued that the landlord should be estopped from enforcing a 1 Month Notice because the landlord had consistently agreed to accept these late payments and was satisfied accepting their late payment fees. The tenants continued by stating that their last late payment was in February 2018 and that following a conversation with the landlord, they had paid rent on time for March, April, May, June and July 2018.

In addition to an Order of Possession, the landlord has applied for a monetary award of \$4,850.00. The landlord said that these fines are the result of bylaw infractions that have been levied against the owner of the property from the city. The landlord explained city has issued weekly fines of \$200.00 because of the presence of a trailer/storage

container on the property and due to an unkept lawn area containing several cars, some of which are unlicensed and uninsured.

The tenants did not dispute that some vehicles were kept on the property, that were uninsured, or that a trailer was present on the property. The tenants argued that they wished to dispute these fines and argue the matter with the city. They stated that the landlord had never provided them with these tickets and had simply accepted the notices. The tenants said the tickets given to them by the landlord did not contain sufficient information to dispute them and they questioned the timelines associated with the fines levied to the owner by the city. In addition, the tenants said that a tree had fallen on the trailer/storage container in question and that the landlord had failed to remove this tree, thus preventing them from moving the trailer/storage container from the property.

The landlord said a significant information package was sent to the tenants on June 1, 2018 containing copies of all tickets issued by the city. The landlord provided copies of these tickets as part of his evidentiary package. The landlord said that all tickets given to the tenants contained sufficient information to dispute them, as the violation numbers were clearly visible, along with the address of the property in question. The landlord said that these bylaw issues were first brought to the attention of the tenants on December 15, 2017 via email. On January 22, 2018 another email was sent to the tenants with further information related to the bylaw matter. Finally, on March 13, 2018 a third email which was provided as part of the landlord's evidentiary package, was sent to the tenants which informed them that fines were being issued to the landlord by the city.

### Analysis

I will begin by analysing the portion of the application related to the Notice to End Tenancy and then turn my attention to the landlord's application for a monetary award.

The tenants have applied to cancel a landlord's 1 Month Notice for Cause. The reason cited on the 1 Month Notice was listed as: *Tenant is repeatedly late paying rent.*

*Residential Tenancy Policy Guideline #38* examines the issue of repeated late payments of rent in detail. It notes, "a landlord may end a tenancy where the tenant is repeatedly late paying rent...three late payments are the minimum number sufficient to justify a notice under these provisions...it does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments." The tenants argued that the landlord should be estopped

from being to enforce this notice because the landlord had consistently accepted late rent and the associated late fee.

*Policy Guideline #38* has considered this argument, stating, “a landlord who fails to act in a timely manner after the most recent late payment may be determined by an arbitrator to have waived reliance on this provision.” In this case, the last late payment of rent was February 2018. No immediate steps were taken by the landlord to address the situation after seven late payments and a 1 Month Notice was not issued to the tenants until May 31, 2018. I find that the landlord has not acted in a timely manner to address these late payments and has waived their ability to rely on section 47(1)(b) of the *Act*. This tenancy shall continue until it is ended in accordance with the *Act*. The tenant is however, cautioned, that this decision does not prevent the landlord from pursuing this matter at a later date, should these late payments of rent resume.

The second portion of the applications before me concerns the landlord’s application for a monetary award of \$4,850.00 related to bylaw fines levied on the property by the city.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove their entitlement to a claim for a monetary award.

After carefully reviewing all of the correspondence and emails submitted to the hearing by the landlord, I find that sufficient notice was provided to the tenants regarding the pending bylaw fines that were going to be issued against the landlord by the city. While some evidence was presented by the tenants that the presence of a tree against the trailer/storage container prevented them tenants from moving or selling this item, I find that steps were eventually taken by the landlord to remove this tree. Following this, the tenants continued to allow this item to remain on the property.

I do not accept the tenants’ argument that they were not provided with sufficient information to dispute the fine, or that the landlord did not adequately inform them of these fines. An email dated April 9, 2018 from the landlord to tenants clearly says, “please call the city and discuss it with them asap to avoid any more fines passed on to you.” I find that the tenants had sufficient knowledge of the bylaw fines and should have

taken adequate steps to address the landlord's concerns. I find that the presence of a tree on the structure in question may have prevented them from moving the structure subject to fines; however, this obstruction was removed by April 9, 2018. I therefore find that the tenants must pay all fines issued after this date. A review of the bylaw tickets shows 20 fines were issued after April 9, 2018 and I therefore award the landlord a monetary award of \$4,000.00, equivalent to 20 fines of \$200.00 each.

As both parties were successful in their applications, they must each bear the cost of their own filing fees.

### Conclusion

The tenants were successful in their application to cancel the landlord's 1 Month Notice. The 1 Month Notice issued May 31, 2018 is therefore invalid and this tenancy shall continue until it is ended in accordance with the *Act*.

The landlord is entitled to a monetary award of \$4,000.00. The landlord is provided with a Monetary Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 24, 2018

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Residential Tenancy Branch