



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, LRE, MND, OPC, LOA, FF

### Introduction

In the first application, by filing number, the tenants seek to cancel a one month Notice to End Tenancy for cause dated April 24 and received April 25, 2018. She also seeks an order restricting the landlords' right of entry and an order permitting her to change the locks on the rental unit.

In the second application the landlords seek an order of possession pursuant to the Notice and a monetary award for repair costs. It became apparent at the start of the hearing that the landlords have not yet completed any repairs, do not know what repairs will be required at the end of this tenancy but for the toilet and do not have objective evidence of the cost of any repairs but for the toilet. In this circumstance the landlords were permitted to withdraw their monetary claim but for the claim for toilet replacement. They may re-apply.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Have the tenants given good cause for the landlords to end this tenancy under any of the grounds cited in the Notice?

### Background and Evidence

The rental unit is a two bedroom basement suite. The landlords live in the upper portion of the home.

The tenancy started in January 2017. The monthly rent is \$1200.00. The landlords hold a \$600.00 security deposit.

The tenants, mother and daughter, rented this accommodation while their home across the street was being renovated.

The Notice in question alleged that the tenants or someone permitted on the premises by them have: a) significantly interfered with or unreasonably disturbed another occupant or the landlord, b) seriously jeopardized the health or safety or lawful right or interest of another occupant or the landlord, or c) have put the landlord's property at significant risk.

The Notice also alleges that the tenants or a person permitted on the property have cause extraordinary damage and have not done required repairs of damage to the rental unit.

Under s. 47 of the *Residential Tenancy Act* (the "Act") proof of any of these allegations will justify the ending of the tenancy.

Ms. L.Y. for the landlord says this tenancy was originally for a one year term while the tenants completed repairs of their own home. The term was extended at the tenants' request and is now a month to month tenancy.

She says that in early March 2018 the landlords saw fruit flies going in the windows of the rental unit. They texted the tenant Ms. Y.K. as the tenant Ms. K.L. does not reside at the rental unit on a full time basis, but got no response. Nor were emails or telephone calls to Ms. K.L. replied to.

On March 29 the landlords entered the rental unit with a maintenance man, on notice to the tenants, to look at a furnace problem. The tenant Ms. L.Y. did not respond to knocks on the door so the landlords used their spare key to open the door. Ms. L.Y. was home. She attempted to refuse them entry.

The landlords saw the inside of the rental unit. There was a strong smell and they saw trash and flies. Ms. L.Y. was described as weak and pale and wearing a mask.

The landlords took photos and presented them as evidence. The living room appears to have been piled full of white bags to the extent that the floor is almost completely covered. The kitchen table was completely covered with trash and empty cans. The bathroom floor surrounding the toilet was covered with napkins or toilet paper, spread out as if to catch moisture. The toilet seat was also covered with paper. The toilet itself was clogged with brown matted toilet paper.

The landlords left and were able to contact the tenant Ms. K.L. who was out of the country. She returned about April 18 and said she would clean and fix the premises but a few days later said she would not. On May 22 the landlords inspected again. The toilet was in the same condition. They say the flies are now coming upstairs into their home.

They think the tenant Ms. Y.K. is unstable or has a mental condition but her mother leaves her alone for long periods.

The tenant Ms. L.Y. testified that her mother is in hospital in another country. She denies any mental instability but admits to an anxiety disorder and sees a counsellor about it.

She says the items in the bags in the living room are personal belongings and not trash. She has cleaned up the kitchen table.

In regard to the toilet, Ms. L.Y. testifies that the handle broke about two weeks before the landlords' entry on March 29 and the toilet overflowed. She turned the water off to the toilet. She had not taken steps to repair the handle nor informed the landlords. She goes across the street to the house under repair to use the toilet there.

### Analysis

The landlords claim the toilet in the rental unit has been cracked and requires replacement. They say they have a photo of the cracked toilet but it was not tendered as evidence. The tenant Ms. L.Y. says the toilet is not damaged but for the broken handle.

I dismiss this item of the landlords' claim. They have not shown on a balance of probabilities that the toilet requires replacement.

The evidence shows, and I find that the tenants have failed to maintain the premises to such an extent as to put the landlord's property at significant risk. The failure to clean the rental unit poses a risk of bug and rodent infestation. The extraordinary state of the bathroom coupled with the failure to attend to the cleaning and repair of it pose a threat that something else will happen, perhaps much more serious and that it will go unattended and unreported, causing the landlords significant loss.

### Conclusion

The Notice to End Tenancy dated April 24, 2018 is a valid Notice and has resulted in this tenancy ending on May 31, 2018. As this tenancy has ended, there will be no consideration of restrictions on the landlords' right of entry or of a lock change.

The landlords will have an order of possession. As the landlords have been partially successful I award them \$50.00 of the filing fee for their application and I authorize them to recover that \$50.00 from the security deposit that they hold.

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 8, 2018

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Residential Tenancy Branch