



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT, OPC

### Introduction

This hearing dealt with cross applications filed by the parties. On May 16, 2018, the Tenants applied for a dispute resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 47 of the *Act* and seeking recovery of the filing fee pursuant to section 72 of the *Act*.

On May 22, 2018, the Landlord applied for a dispute resolution proceeding seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act*.

B.L. and L.L.L. attended the hearing as the Tenants. M.H.L. attended the hearing as the Landlord and A.L. and W.J.T. attended the hearing as agents for the Landlord. All parties provided a solemn affirmation.

Both the Tenants and Landlord confirmed that they served the other party with their respective Notice of Hearing packages and both parties confirmed receipt of them. As such, and in accordance with sections 89 and 90 of the *Act*, I am satisfied that the parties were served with the respective Notice of Hearing packages.

I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- Are the Tenants entitled to recovery of the filing fee?
- Is the Landlord entitled to an Order of Possession?

### Background and Evidence

A.L. stated that the tenancy started on October 5, 2017 and rent was established at \$800.00 per month, due on the first day of each month. A security deposit of \$400.00 was paid. B.I. confirmed these details; however, he stated that the tenancy started when the security deposit was paid on October 2, 2017.

A.L. stated that the dispute address is a rancher where the Landlord rented out one bedroom to L.L.L. A.L. referred to the Landlord's written submissions where the tenancy agreement reiterated that only one bedroom was part of the agreement. A.L. stated that the Landlord lived in the rancher occasionally and cited a print out that corroborated the Landlord's GPS coordinates at the rental address. He also referenced a floor plan of the rental unit's layout and pointed out that two of the rooms were occupied by the Landlord as storage and one room was used to host occasional art classes. A.L. advised that the Landlord is the only person on title as the owner of the rental unit.

B.I. confirmed that they rented one bedroom in the rental unit and that they had access to the living room, kitchen, and bathroom. He also confirmed that the Landlord would have to enter through the lone, main entrance to the rental unit, that the Landlord occupied two bedrooms as storage, and that the Landlord used the one bedroom to host art lessons twice a week. The Landlord and art class students of the Landlord would use one of the bathrooms in the rental unit; however, the Landlord never lived in the rental unit. B.I. confirmed that the area that they rented was not self-contained but they rented the bedroom, living room, kitchen, and bathroom with the understanding that due to the reduced rent, the Landlord could utilize the one bedroom and bathroom to host art classes.

### Analysis

During the hearing, much testimony was provided from both parties with respect to the living arrangement inside this rental unit. However, the consistent evidence is that this rancher had one, main entrance where all parties entered and exited from.

While the Landlord (owner) did not reside in the rental unit, the Landlord did occupy a majority of it, did utilize one bedroom frequently to conduct business, and did use one of the bathrooms. Other than the Tenants' bedroom, the Tenants did not have a self-contained unit separating what would be the Landlord's domain and what would be the Tenants', nor were there any clear walls separating the areas within this rancher for the express use for the Tenants, where the Landlord did not have access.

In my view, after hearing testimony from both parties, while the Landlord did not live in the premises, I find that the Landlord did have access to the whole rental unit, did utilize a portion of the rental unit, and did share a bathroom with the Tenants.

While the Tenants have a differing viewpoint on the arrangement that was understood, I find that I am satisfied that the Landlord and Tenants shared access to the rental unit and at the very least, a bathroom was shared. Even though the Landlord did not live in the rental unit, I am satisfied that the Landlord had unimpeded access to other areas of the rental unit, and thus, there was a sharing of facilities in this situation. As Section 4(c) of the *Act* stipulates, the *Act* does not apply in situations where a tenant shares a bathroom or kitchen facilities with the owner of the accommodation. As such, I find that even if the parties intended upon entering into a tenancy agreement as contemplated under section 1 of the *Act*, the *Act* would not apply to this tenancy. Therefore, I have no jurisdiction to render a decision in this matter.

#### Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application.

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 11, 2018

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Residential Tenancy Branch