



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, MNDCT, RP

### Introduction

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

- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

The landlord, the landlord's agent and the tenants attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Tenant J.R. (the tenant) indicated that they would be the primary speaker for the tenants during the hearing.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) which was served by regular mail on June 09, 2018. Although the Application was not served in accordance with section 89 (1) of the *Act*, the landlord confirmed receipt and for this reason I find the landlord is duly served with the Application pursuant to section 71 (c) of the *Act*, which allows an Arbitrator to find a document sufficiently served for the purposes of the *Act*.

The landlord acknowledged receipt of the tenant's evidentiary package. In accordance with section 88 of the *Act*, I find the landlord is duly served with the tenants' evidence. During the course of the hearing the tenant referred to a few pieces of evidence such as receipts and a couple e-mails that were not in the landlord's evidence package or in the evidence package provided to the Residential Tenancy Branch.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure states that documentary evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that the tenant did not serve the landlord with these other pieces of evidence and that the landlord may be prejudiced by this as they did not have a chance to respond to the tenant's other evidence. For this reason the tenant's other evidence items including receipts and additional e-mails are not accepted for consideration.

The landlord testified that they left their evidence on the doorstep at the tenants' residence. The tenants stated they did not receive the landlord's evidence. Section 88 of the *Act* permits service of evidence by posting it to the door of the tenants' residence or leaving it in the tenants' mailbox, in addition to personal service and service by mail, but does not allow for documents to be left on the doorstep of the tenants' residence. As the tenants stated that they have not received the evidence and the evidence was not served in accordance with section 88 of the *Act* to the tenants, I find that I will not consider the landlord's evidence.

The tenant confirmed that they received the One Month Notice on May 26, 2018. In accordance with section 88 of the *Act*, I find that the tenants are duly served with the One Month Notice.

#### Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to an order for the landlord to make repairs to the rental unit?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

#### Background and Evidence

The tenant testified that this tenancy began on February 01, 2018, with a current monthly rent of \$1,000.00, due on the first day of each month. The tenant and landlord agreed that the landlord retains a security deposit in the amount of \$500.00. The agent stated that the tenants actually moved into the rental unit on January 28, 2018, which the tenants confirmed.

A copy of the landlord's One Month Notice dated May 25, 2018, was entered into evidence. In the One Month Notice, requiring the tenants to end this tenancy by June

31, 2018, the landlord cited the following reasons for the issuance of the One Month Notice:

*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 tenants provided in evidence;

- A copy of an e-mail from Tenant A.S. to the landlord, dated May 30, 2018, in which Tenant A.S. states that the rental unit was dirty when they moved in and that the tenants spent three days cleaning it;
- A copy of a paystub for Tenant A.S. for the time period of May 11, 2018, to May 25, 2018; and
- Various pictures from within the rental unit of different items that the tenants want to have repaired.

The landlord submitted that he had obtained documents that show Tenant J.R. was arrested at the rental unit. The landlord stated that there are police cars constantly coming and going from the rental unit.

The agent confirmed the landlord's testimony and testified that at one point the police had called her to gain access to the rental unit in order to execute a warrant. The agent stated that Tenant J.R. has committed a variety of crimes, including identity theft which puts the landlord's property at risk.

Tenant A.S. stated that Tenant J.R. was not arrested at the rental unit and that no new charges have been laid. Tenant J.R. submitted that he is currently under curfew for past issues and that Tenant J.R. missed curfew on one occasion which resulted in a heavier police presence than normal. Tenant J.R. testified that the tenants have not engaged in any illegal activity at the rental unit.

Tenant J.R. submitted that there are numerous issues in need of repair at the rental unit including but not limited to the oven, light fixtures, a hole in the roof, electrical issues throughout the rental unit and black mould. Tenant J.R. states that an e-mail was sent to the landlord regarding these issues but they have not received any response from the landlord.

Tenant J.R. testified that the rental unit was dirty when the tenants moved into it and that both tenants had to take three days off of work to clean it and to dispose of debris that was in the rental unit. Tenant A.S. stated that the agent had promised to hire a cleaner for the rental unit before the tenants moved in if the previous occupants did not clean the rental unit satisfactorily.

The landlord and agent both indicated that they did not receive any correspondence from the tenants regarding items in need of repair but that the landlord did not have any issue with completing any required repairs. The agent submitted that there was no promise made to the tenants regarding the rental unit being cleaned by a professional. The agent stated that the tenants requested to move into the rental unit early, which the agent allowed with the understanding that the rental unit was not yet clean but that no rent would be paid for the last four days in January 2018, when the tenants took possession of the rental unit.

#### Analysis

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47(4) of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenants submitted their Application to dispute the One Month Notice on June 04, 2018. In accordance with section 47(4) of the *Act*, I find that the tenants have disputed the One Month Notice in the 10 Day timeframe allowed.

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

*In order to be effective, a notice to end a tenancy must be in writing and must*

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) **give the address of the rental unit,***
- (c) state the effective date of the notice,...and*
- (e) when given by a landlord, be in the approved form.*

I find that the One Month Notice does not have the address of the rental from which the tenants must vacate. For this reason I find that the One Month Notice dated May 25, 2018, does not comply with the provisions of section 52(b) of the *Act* and is not a valid notice to end tenancy. For this reason the One Month Notice dated May 25, 2018, is set aside and this tenancy will continue until ended in accordance with the *Act*.

Section 32 of the *Act* establishes that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

In regards to the repairs being requested by the tenants, the tenants testified that they sent an e-mail to the landlord listing the items that needed repair. The landlord and the agent stated that they did not receive any e-mail regarding repairs to be made. As section 88 of the *Act* does not allow for service of documents by e-mail, I find that the tenants have not provided sufficient evidence of a formal notice in writing to the landlord of repairs to be made.

For the above reason I dismiss the tenants' Application for repairs to be made to the rental unit, with leave to reapply. I note that the landlord and the tenants are at liberty to address any items in need of repair and that they should work together toward that end.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Regarding the tenants' request for compensation for three days spent cleaning the rental unit, I find that, based on the evidence, affirmed testimony and a balance of probabilities, the tenants have not established that any loss exists.

I find that the tenants are submitting that they each lost three days of work income; however, there is no evidence provided from the tenants' employers to confirm any time taken off. I further find that the only evidence provided regarding employment income is a paystub from May 2018 for Tenant A.S., which is not for the period of time that the tenants are requesting compensation for. Although the paystub provided does give a total amount of earnings for the year, I find that there is no other evidence or indication as to what the total amount of earnings should be if three days of missed work are taken into account. I find that there is no evidence of Tenant J.R.'s lost wages due to time off.

I find that the tenants did not dispute the agent's testimony that rent was not paid for the days in January 2018 when the tenants lived in the rental unit prior to the tenancy agreement officially commencing. Based on a balance of probabilities, I accept the landlord's submission that she allowed the tenants to move in prior to the official start of the tenancy without paying rent for January 2018, based on the condition of the rental unit and the acceptance of it as is by the tenants.

Finally, I find that there is no condition inspection report or any other evidence to establish the condition of the rental unit at the time that the tenants moved in.

As I have found that the tenants have not established that any loss exists, I dismiss the tenants' Application for compensation for loss under the *Act*, regulation or tenancy agreement, without leave to reapply.

#### Conclusion

The tenants are successful in their Application to have the One Month Notice set aside.

The One Month Notice dated May 25, 2018, is cancelled and is of no force or effect.

This tenancy will continue until it is ended in accordance with 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: July 30, 2018

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Residential Tenancy Branch