



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RIVERWALK VILLAS INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT, OLC

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on June 8, 2018 (the “Application”). The Tenants applied to dispute a One Month Notice to End Tenancy for Cause dated May 31, 2018 (the “Notice”). The Tenants also applied for an order that the Landlord comply with the *Residential Tenancy Act* (the “Act”), the *Residential Tenancy Regulation* (the “Regulations”) or the tenancy agreement. The Tenants sought reimbursement for the filing fee.

The Tenants appeared at the hearing with the Advocate and Witness 2. Witness 2 left the room until required. The Representative of the Landlord (the “Representative”) appeared. She had Witness 1 call into the hearing when required.

I asked the Tenants what the application for an order that the Landlord comply with the *Act*, *Regulations* or the tenancy agreement related to. Tenant 1 said it related to parking fees and a deadbolt fee.

Rule 2.3 of the Rules of Procedure (the “Rules”) requires claims made in an Application for Dispute Resolution to be related and allows an arbitrator to dismiss unrelated claims with or without leave to re-apply.

I told the Tenants I would not consider the request for an order that the Landlord comply with the *Act*, *Regulations* or the tenancy agreement as it was unrelated to the main issue before me which is the dispute of the Notice. I dismiss this aspect of the Application with leave to re-apply.

The Representative provided the correct legal name of the Landlord and I amended the Application to reflect this. This is also reflected in the style of cause.

I explained the hearing process to the parties who did not have questions when asked. All parties other than the Advocate provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues were raised in this regard.

All parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Should the Notice be cancelled?
2. If the Tenants are not successful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
3. Are the Tenants entitled to reimbursement for the filing fee?

#### Background and Evidence

A written tenancy agreement was submitted by the parties and both parties agreed it is accurate. It is between the Landlord and Tenants regarding the rental unit. The tenancy started May 1, 2018 and is for a fixed term ending April 30, 2019. Rent is \$845.00 per month due by the first of each month.

A copy of the Notice was submitted as evidence. It is addressed to the Tenants and refers to the rental unit address. It is signed and dated May 31, 2018 by the Representative. It has an effective date of June 30, 2018. The grounds for the Notice are:

1. The Tenant or a person permitted on the property by the Tenant has:
  - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord.

(ii) seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

(iii) put the landlord's property at significant risk.

("Ground 1")

2. The Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to:

(i) damage the landlord's property.

(ii) adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

(iii) jeopardize a lawful right or interest of another occupant or the landlord.

("Ground 2")

The parties agreed the Notice was served on the Tenants personally May 31, 2018.

The Tenants confirmed they filed the Application June 8, 2018 and the Representative did not dispute this.

The Representative testified as follows in relation to the grounds for the Notice. There was a dispute between the Tenants that Tenant 1 brought to the attention of all members of building management. Tenant 1 left the impression that Tenant 2 is dangerous and doing illegal drugs. Tenant 1 said Tenant 2 would cause issues and damage if on the property. Tenant 1 wanted the locks on the rental unit changed because she did not feel safe. Building management was concerned for Tenant 1 and wanted to ensure the situation did not escalate both for Tenant 1 and for surrounding tenants. Building management did change the locks on the rental unit.

The Representative pointed to an Incident Report dated May 29, 2018 submitted as evidence. I have reviewed this report.

The Representative further testified as follows. The following day, Tenant 1 changed her mind about the situation. The Landlord does not find it acceptable that Tenant 1 changed her mind and wanted Tenant 2 back on the property. The Landlord has safety

concerns about Tenant 2. Building management view Tenant 2 as a risk to the property.

In relation to Ground 2 in the Notice, the Representative testified that the basis for this ground is the use of drugs by Tenant 2. She also said Tenant 1 made Tenant 2 seem like a dangerous person that does illegal activity.

In response to questions by the Advocate, the Representative stated as follows. The Landlord has no written or physical proof that Tenant 2 has engaged in illegal activity. The Landlord based their actions on what Tenant 1 told them about Tenant 2.

The Representative called Witness 1. He testified that he changed the locks on the rental unit. He said Tenant 1 told him about her husband “pocket dialing” her while he was with his friends doing drugs.

In response to questions by the Advocate, Witness 1 said he did not observe any signs of drugs or violence while in the rental unit.

Tenant 1 testified that she never told anybody at the building the things the Representative has said she did. She testified that she never told anybody that Tenant 2 is violent or uses drugs. Tenant 1 testified that neither Tenants use drugs and that there are no drugs in the rental unit. She said there is no violence in the rental unit.

The Tenants called Witness 2. She testified that she used to live beside the Tenants and has known them for two years. She said the Tenants are not involved with drugs or violence. I understood Witness 2 to say that Tenant 1 did not tell building management the things the Representative said she did.

The Advocate made the following submissions. The Incident Report from May 29, 2018 has no details about violence or drug activity. There is nothing in it about the police being called or any physical damage. These would have been important issues to address in the report if Tenant 1 raised the issues stated.

### Analysis

The Landlord was permitted to serve the Notice based on the grounds noted pursuant to section 47(1)(d) and (e) of the *Act*. The Tenants had 10 days from receiving the Notice to dispute it under section 47(4) of the *Act*.

It is not in dispute that the Tenants received the Notice May 31, 2018 and filed the Application June 8, 2018, within the time limit set out in section 47(4) of the *Act*.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not that the facts occurred as claimed.

I am not satisfied based on the evidence provided that the Landlord has established Ground 1 or Ground 2 in the Notice. I understood the issue to be in relation to Tenant 2. There is no evidence that Tenant 2 has been violent or used drugs let alone that these actions have “significantly interfered with or unreasonably disturbed another occupant or the landlord”, “seriously jeopardized the health or safety or lawful right of another occupant or the landlord” or “put the landlord's property at significant risk”. There is no evidence that Tenant 2 has engaged in illegal activity.

The only “evidence” of any wrongdoing by Tenant 2 is the allegations by Tenant 1 made to building management. Tenant 1 testified that she never made these allegations. Even if Tenant 1 did, if I accept the position of the Landlord on this issue, Tenant 1 has come to this hearing and testified that Tenant 2 is not violent and does not use drugs. Therefore, I cannot conclude from any of the evidence before me that Tenant 2 is violent, has been violent or uses drugs. Nor can I conclude that Tenant 2 has done anything to interfere with or disturb others, jeopardize the health or safety of others, put the property at risk or that he has engaged in illegal activity.

I note that the Incident Report from May 29, 2018 does not refer to drugs or violence. More importantly, it states “[we] changed the deadbolt on the unit to prevent [Tenant 2] from entering the unit. It was unknown if he would return and resort to violence to the tenant or the building” (emphasis added). In my view, this statement supports the finding that the Landlord has no evidence that Tenant 2 is in fact violent or a risk to the property or others.

I find the Landlord has failed to prove the Notice and therefore the Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

As the Tenants were successful in this application, I grant them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, I authorize the Tenants to deduct \$100.00 from one future rent payment as reimbursement for the filing fee.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

The Tenants are entitled to reimbursement for the filing fee and are permitted to withhold \$100.00 from one future rent payment as reimbursement for the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: August 07, 2018

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Residential Tenancy Branch