



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            CNC, OLC, LRE, FFT

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The male tenant and the landlord along with the landlord's assistant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed he had authority to speak on behalf of the female tenant, who was not present for the hearing.

Each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

### Preliminary Issue – Withdrawal

At the outset of the hearing the tenant confirmed that he wished to withdraw the following portions of the tenants' application;

- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 62; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Accordingly, these portions of the tenants' application are withdrawn and no further actions in relation to these claims are required.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants' authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the testimony of the parties, the tenancy began on May 1, 2018 on a fixed term until April 30, 2019. The landlord resides upstairs, while the tenants reside in the rental unit below. Rent in the amount of \$1,500.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$750.00 at the start of the tenancy, which the landlord still retains in trust. The tenants continue to reside in the rental unit.

The tenant acknowledged receipt of the landlord's 1 Month Notice dated August 15, 2018. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- the 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.

The parties agree that there is an ongoing dispute over noise. Specifically, the tenants complain of the noise generated by the landlord's children. During the hearing the landlord testified that although the children's playroom is above the tenant's bedroom, she is cognizant of the noise travel and continually attempts to ensure her children are quiet. The tenant acknowledged that in retaliation of the upstairs noise they have slammed their unit doors a total of three times. The landlord contends that the door slamming has happened in excess of three times, but did not provide any further dates. The landlord testified that the 1 Month Notice was issued on the basis of the doors being slammed.

Analysis

Under section 47 of the *Act*, a landlord may end a tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed the landlord and if the tenant or a person permitted on the residential 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. The onus is on the landlord to prove the significant interference or unreasonable disturbance or illegal activity took place by the tenant or person permitted on the property by the tenant.

A landlord may only end a tenancy for significant interference if the issues with the tenant are significant, unreasonable and serious. In this case, although the tenant acknowledged doors were intentionally slammed, he testified the doors were slammed in response to unreasonable noise upstairs. While I do not condone the tenants' behaviour, I find that the three isolated incidents are not significant, unreasonable or serious enough to warrant the end of this tenancy. In an effort to mitigate noise, and if at all possible, the landlord may consider designating a room other than the room above the tenants' bedroom, as a playroom.

In regards to the second ground indicated on the landlords 1 Month Notice, I find the landlord has failed to establish the tenants have engaged in illegal activity, a serious violation of federal, provincial or municipal law.

Overall, I find the landlord has failed to meet her burden in proving the reasons listed on the 1 Month Notice. The 1 Month Notice is set aside. As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for the application.

#### Conclusion

The tenants' application to cancel the 1 Month Notice is upheld. The tenancy will continue until it is ended in accordance with the *Act*.

The tenants are entitled to deduct \$100.00 from future rent in satisfaction of the monetary award to recover 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 *Residential Tenancy Act*.

Dated: October 11, 2018

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Residential Tenancy Branch