



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET FFL

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking an order ending the tenancy earlier than a notice to end the tenancy would take effect, and to recover the filing fee from the tenant for the cost of the application.

Both landlords and the tenant attended the hearing and each gave affirmed testimony. The tenant was also assisted by a Legal Advocate. The parties (or the Legal Advocate) were given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Have the landlords established that the tenancy should end earlier than a One Month Notice to End Tenancy for Cause would take effect?

### Background and Evidence

**The first landlord** (DB) testified that this month-to-month tenancy began on June 1, 2018 when the landlords purchased the home. The tenant was already a tenant in the basement suite at that time, and the landlords moved to the upper level with their child and the landlord's parents.

Rent in the amount of \$1,250.00 per month is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. The landlords received a security deposit from the previous owner on behalf of the tenant in the amount of \$550.00 which is currently held in trust by the current landlords. There is no written tenancy agreement, other than a typewritten

document dated June 5, 2018 stating that the rent is \$1,250.00 per month including basic amenities along with the fastest internet.

The landlord further testified that on September 5, 2018 the tenant had reported to the landlord that someone had scratched her car in the driveway and told the landlord's wife to put up security cameras and turn on all outside and sensor lights all night. The landlord's wife said that would be okay if the tenant paid an extra \$50.00 per month toward hydro but the tenant refused that.

The next day the landlord arrived home from work around 11:00 a.m. and could smell smoke and saw some coming from the basement suite. No one answered the basement door, so the landlord called 9-1-1. Fire department personnel opened the basement door and found a lot of smoke and fire on the stove. The tenant was not home. They ventilated the smoke out, and all lights and the outside lights and stove had been left on and 2 jerry cans full of gas were right by the entrance. The landlord texted the tenant who said she may have left stove on by mistake.

The landlord feels that the tenant deliberately attempted to cause damage; the fire department personnel said that the stove was on.

Pretty much every day the tenant tells the landlord and his spouse how to live and making demands of the landlords about parking, placement of garbage cans and other things. The tenant has also started to do her laundry late at night knowing that the landlord has to get up early in the morning. The slightest noise awakens him, and the landlord fears that something can happen again. Also, when the landlords first moved into the rental home, the tenant made demands and accusations about using too much hot water.

On September 6, 2018, the day of the fire incident, the landlord served the tenant with a One Month Notice to End Tenancy for Cause (hereafter referred to as "the Notice") personally and by placing a copy on the door of the rental unit. A copy has been provided for this hearing by the tenant and it is dated September 6, 2018 and contains an effective date of vacancy of October 6, 2018. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
  - damage the landlord's property;

- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The “Details of Cause(s)” section states: On 06 September 2018 (the tenant) left the stove on which caused all the smoke and fire in the basement. Fire department came and took the smoke out and turned the fire off. She left all the lights on. She also had 2 jerry cans in basement too.”

The landlords have since learned that the effective date of vacancy is changed to October 31, 2018. The tenant disputed the Notice and a hearing is scheduled for October 29, 2018. The landlord testified that the tenant has done the damage on purpose and fears she may do it again. The landlord’s parents left on October 8, 2018 because they don’t feel safe and weren’t able to sleep for 2 weeks.

The landlord also testified that although the tenant’s evidence indicates there was no damage, a few smoke spots appeared on the kitchen cabinet and the ceiling above the stove.

The landlord didn’t know immediately that it may have been intentional until he saw the jerry cans that were full. The landlord picked them up and they were heavy. The following day, the landlord contacted police indicating that he wanted to end the tenancy. They said to contact the Residential Tenancy Branch since the tenant had already been served with the One Month Notice to End Tenancy for Cause.

**The second landlord** (MB) testified that the tenant has had a lot of problems since the landlords moved into the rental home in June, 2018.

On September 5, 2018 the tenant messaged the landlord asking for security cameras and lights so that she could see who might have scratched her car. The landlord agreed if the tenant would agree to pay another \$50.00 per month for hydro, but the tenant denied that. Then there were issues about where the garbage cans were placed and then about parking. Then there was a problem with the laundry. The tenant normally did it in the morning or afternoon, but became very rude and started doing laundry at night.

The landlord told the tenant she could move out, but the tenant declined. Everyone, including the landlord’s in-laws are stressed.

**The tenant** testified that she did not deliberately attempt to start a fire; it was an accident. The jerry cans in the laundry area are empty and are simply stored there.

When the tenant arrived home after the fire department had been there, all doors and windows were closed. The landlord told the tenant that a fire extinguisher had been used, but there was no evidence of that, and it looked absolutely clean. The tenant has provided photographs which she testified were taken the same day as well as a witness statement dated September 14, 2018 indicating that there was no damage in the rental unit on the date of the incident. The tenant does not recall what was on the stove, however when she arrived home, there was no smoke, but a smell of smoke.

The tenant has no other place to go if the rental unit had burned, so the tenant would not have deliberately burned the house down.

The landlords went to the rental unit that evening and served the One Month Notice to End Tenancy for Cause and said that the tenant could either leave or dispute it. They indicated toward the jerry cans and said the fire department had commented that it was "objectionable." The tenant told the landlords they were empty and invited them to pick them up, but they didn't do so. The landlord objected to the presence of the cans and the tenant removed them after dinner that evening.

With respect to lights and a camera, the tenant testified that she didn't mention a camera; only a motion light on the landlord's patio. The landlord said that the tenant could install one and pay an additional \$50.00 per month. The tenant was driving at the time, so it was a short conversation. All text messages exchanged between the parties have been provided for this hearing.

The tenant also testified that she has always done laundry after 7:00 p.m. because she works 2 jobs. She doesn't know the landlord's sleeping times, and doing laundry in the evening is not done on purpose to annoy the landlords.

The tenant has apologized many times. The tenant does not minimize the event, but it was an accident. There has never been an issue like this before; the tenant is a psychotherapist employed by a non-profit organization as a Registered Clinical Counsellor and has 3 children residing with her in the rental unit.

### Analysis

The *Residential Tenancy Act* states that a landlord may request an order ending a tenancy on a date that is earlier than the tenancy would end if a notice to end the tenancy were given. It also states that I may grant an Order of Possession specifying a date only if satisfied that the landlord has established that:

- (a) the tenant or a person permitted on the residential property by the tenant has done any of the following:
  - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
  - (iii) put the landlord's property at significant risk;
  - (iv) engaged in illegal activity that
    - (A) has caused or is likely to cause damage to the landlord's property,
    - (B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
    - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
  - (v) caused extraordinary damage to the residential property, and
- (b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect.

In this case, the landlords have issued a One Month Notice to End Tenancy for Cause, which was disputed by the tenant and the hearing is scheduled for October 29, 2018. The landlords are also now aware that the effective date of vacancy is changed from October 6, 2018 as stated in the Notice to October 31, 2018 because rent is payable on the first day of the month and the notice was served after the first day of the month.

It is not for me to determine whether or not the landlords had cause to issue the Notice; that is a matter that is scheduled to be heard on October 29, 2018. In order to be successful in ending the tenancy earlier, the onus is on the landlords to establish the elements in Section 56 above, and that it would be unreasonable or unfair to the landlord to wait till October 31, 2018, or after the October 29, 2018 hearing to end the tenancy.

I have reviewed all of the evidentiary material provided by the parties. The only supporting evidence from the landlords is photographs, 2 of which simply show that the fire

department attended. The other shows a single jerry can under a box and behind another box.

The landlords fear for their safety and one of the landlords testified that there were 2 jerry cans and both were full. The tenant disputes that, and they certainly don't appear to be close to a stove or placed in a location that would be dangerous. It simply appears that items are stored in that area among other items. I find that the landlords have failed to establish that the tenant deliberately intended to cause a fire, regardless of how much damage was done, and I am not satisfied that the landlords or the landlords' property is at risk significantly enough to warrant ending the tenancy prior to the One Month Notice to End Tenancy for Cause to take effect.

Since the landlords have not been successful with this application, the landlords are not entitled to recovery of the filing fee.

### Conclusion

For the reasons set out above, the landlords' application is hereby dismissed.

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 18, 2018

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Residential Tenancy Branch