



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, ERP, OLC

### Introduction

This hearing was convened in response to the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The tenant requested:

- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties 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. The tenant acknowledged receipt of evidence submitted by the landlord. The tenant advised that she neglected to serve the landlord their documentary evidence due to some personal issues. As that documentation was not served in accordance with the Residential Tenancy Rules of Procedure, the tenants' documentation was not considered in making this decision.

### Issues to Decide

Should the landlord be compelled to conduct emergency repairs?

Should the One Month Notice to End Tenancy for Cause be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order to compel the landlord to comply with the *Act*, regulation or tenancy agreement?

### Background and Evidence

The landlord gave the following testimony. The tenancy began on June 1, 2017 with the rent of \$590.00 due on the first of each month. The landlord issued a One Month Notice to End Tenancy for Cause on September 4, 2018 with an effective date of October 4, 2018 for the following reasons:

*Tenant has allowed an unreasonable number of occupants in the unit/site*

*Tenant or a person permitted on the property by the tenant has:*

- *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;*

*Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlord testified that the tenant engages in partying, drinking and drugs on a regular basis and has an additional five people living with her family of four. The landlord testified that the tenants' guests also engaged in reckless and illegal activity causing other tenants to complain. The landlord testified that the tenants guests have been abusive aggressive, and threatening to children that reside in this complex. The landlord testified that the tenant has not shown any improvement in her behaviour and asks for an order of possession.

The tenant gave the following testimony. The tenant testified that she has had a difficult time over the past five months and has a "big issue with drinking". The tenant testified that she is "trying to get back on the wagon" and is trying to do better. The tenant testified that she does not dispute the landlords' testimony.

### Analysis

When a landlord issues a notice under Section 47 of the Act they bear the responsibility in providing sufficient evidence to support the issuance of that notice. I accept the landlord's undisputed testimony and I find that the tenant was served with a notice to end tenancy for cause. Although the tenant did apply for dispute resolution to dispute the notice, they did not challenge or dispute the landlords' testimony and in fact

confirmed his testimony. Based on the above, I find that the landlord is entitled to an order of possession pursuant to section 55 of the Act. The tenancy is terminated.

In terms of the effective date of the order of possession section 53 of the Act addresses the issue as follows:

**Incorrect effective dates automatically changed**

**53** (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

(3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) [*tenant's notice: landlord breach of material term*], 46 [*landlord's notice: non-payment of rent*] or 50 [*tenant may end tenancy early*], if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

- (a) that complies with the required notice period, or
- (b) if the landlord gives a longer notice period, that complies with that longer notice period.

The landlords notice states that effective date is October 4, 2018 however as noted above, the notice “auto corrects” to October 31, 2018. This was explained to both parties and each indicated they understood.

As I have found that this tenancy is over, I hereby dismiss the remainder of the tenants’ application.

Conclusion

The One Month Notice to End Tenancy for Cause dated September 4, 2018 is confirmed; it is of full effect and force. The tenancy is terminated. The landlord is granted an order of possession. The tenants' application is dismissed in its entirety without leave to reapply.

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 22, 2018

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Residential Tenancy Branch