



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding THE BEVERLY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes           CNC, OLC, FFT, OPC, MNDL-S, FFL

### Introduction

This hearing dealt with cross applications filed by the parties. On July 25, 2018, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking an Order for the Landlord to Comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On August 4, 2018, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession for Cause pursuant to Section 47 of the *Act*, seeking a Monetary Order for compensation for damage pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenants attended the hearing and L.T. attended the hearing as an agent for the Landlord. All parties provided a solemn affirmation.

The Tenants advised that they served the Landlord with the Notice of Hearing package and their evidence by registered mail and the L.T. confirmed receipt of this. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package and evidence.

L.T. advised that she served Tenant W.S. one Notice of Hearing package for each Tenant, including some evidence, by hand on August 11, 2018. W.S. stated that he received no such packages. Both parties were questioned regarding service of these documents and they were advised that I would reserve judgement with respect to service of these documents, but I would continue to hear evidence with respect to the issues on the Applications.

L.T. submitted that she served additional evidence to support her claims by registered mail on September 5, 2018 to the Tenants at the dispute address. However, she acknowledged that the Tenants had vacated the rental unit prior to this date and she had no other way of serving this evidence to them.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to an Order to have the Landlord comply?
- Is the Landlord entitled to a Monetary Order for compensation for damage?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

Both parties agreed that the tenancy started on December 1, 2016 and ended when the Tenants vacated the rental unit on August 31, 2018 pursuant to the Notice. Rent was established at \$1,495.00, due on the first day of each month and a security deposit of \$747.50 was also paid.

Both parties agreed that the Notice was posted to the Tenants' door on July 18, 2018. The reasons the Landlord served the Notice are because the "Tenant or a person permitted on the property by the tenant has: put the landlord's property at significant risk" and the "Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park." The effective date of the Notice was August 31, 2018.

#### Analysis

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

However, with respect to the Tenants' request to cancel the Notice and an Order for the Landlord to Comply, and the Landlord's request for an Order of Possession based on the Notice, as the Tenants have vacated the rental unit prior to the hearing, this is a moot point. Therefore, an Order to Comply and an Order of Possession are not necessary to be considered or granted, and I dismiss these portions of the parties' respective claims without leave to reapply.

With respect to the Landlord's claims for compensation regarding damage to the rental unit, no testimony was provided with respect to these claims for damages during the hearing. The undisputed testimony is that the Tenants did not receive the entirety of the Landlord's evidence regarding the claims against them. As it would be prejudicial to the Tenants to proceed with a hearing without them knowing the full case against them, I dismiss this portion of the Landlord's claim with leave to reapply.

As the neither the Tenants nor the Landlord were successful in their respective Applications, I find that neither party is entitled to recover the \$100.00 filing fee paid for these Applications.

### Conclusion

I dismiss the Tenants' Application in its entirety, without leave to reapply. Furthermore, I dismiss the Landlord's Application with respect to the Order of Possession without leave to reapply. However, I dismiss the Landlord's claim with respect to the damages claim with 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: September 20, 2018

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Residential Tenancy Branch