



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDCT, ERP, LRE, PSF

### Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 48;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

The landlord and the tenants 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 landlord had an assistant, an advocate and an advocate assistant attend the hearing on their behalf although the landlord indicated that she would be the primary speaker during the hearing. Tenant A.K. (the tenant) testified that she would be the primary speaker for the tenants during the hearing.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application), the Amendment to an Application for Dispute Resolution (the Amendment) and evidentiary package which were personally served to them. In accordance with

sections 88 and 89 of the *Act*, I find that the landlord was duly served with the Application, the Amendment and evidentiary package.

The tenant acknowledged receipt of the landlords' evidentiary package which was personally served to them. In accordance with section 88 of the *Act*, I find that the tenants were duly served with the landlord's evidentiary package.

The tenant acknowledged receipt of the One Month Notice which was personally served to them on July 11, 2018. In accordance with section 88 of the *Act*, I find that the tenants were duly served with the One Month Notice.

#### Preliminary Matter

At the outset of the hearing the tenant acknowledged that a portion of her monetary claim was for employment earnings and is outside the jurisdiction of the *Act*. The tenant requested to withdraw the monetary portion of their claim related to employment earnings.

I allowed the Application to be amended pursuant to section 64 of the *Act* as employment earnings are not within the jurisdiction of the *Act*.

#### Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession based on the One Month Notice?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order to the landlord to make emergency repairs to the rental unit?

Are the tenants entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Are the tenants entitled to an order to the landlord to provide services or facilities required by law?

#### Background and Evidence

The landlord and the tenants agreed that this tenancy began on October 03, 2016.

The landlord provided written evidence that the tenants were employed by the landlord as 'farm sitters' and that no rent was expected to be paid by the tenants. In the tenancy agreement, signed between all of the named parties, it is stated that there is a wood stove for heating, propane lights and propane cook stove with no electricity or water. The agreement goes on to say that all of the tenants' living expenses are theirs alone to pay.

A copy of the landlord's signed July 11, 2018, One Month Notice was entered into evidence. In the One Month Notice, requiring the tenants to end this tenancy by August 12, 2018, the landlord cited the following reason for the issuance of the One Month Notice:

*Tenant's rental unit is provided by the employer to the employee to occupy during the term of employment and employment has ended.*

The tenant also submitted the following relevant evidentiary material:

- A copy of a Monetary Order Worksheet detailing the tenants' monetary claim which consist of employment earnings, which has been withdrawn by the tenants, reimbursement for gas, propane and batteries as well as \$15,000.00 for pain and suffering which is noted as PTSD.

The landlord testified that the tenancy was employment based and that they have ended their employment with the tenants. The landlord stated that the tenancy agreement indicates that all living expenses in the rental unit are the responsibility of the tenants.

The tenant read a prepared statement in which they stated that the tenants had poor living conditions at the rental unit which caused them stress among other difficult circumstances surrounding their tenancy. The tenant did not dispute that their employment ended with the landlord and that they just needed more time to be able to vacate the rental unit beyond the effective date on the One Month Notice.

The landlord declined to provide any additional time to the tenants to vacate the rental unit beyond the effective date of the notice.

### Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The tenants bear the burden to prove that they are entitled to a monetary award to recover expenses related to gas used for an electricity providing generator, propane for the cook stove and batteries for LED lights as well as for pain and suffering in the amount of \$15,000.00 from the landlord.

I have reviewed all documentary evidence and affirmed testimony and I find that the tenants have not provided any receipts or other proof of the amounts claimed on the Monetary Order Worksheet for gas expenses, propane expenses and batteries. I further find that the tenants signed an agreement which indicates that they are responsible for their own living expenses and that the conditions in the rental unit are clearly indicated on the tenancy agreement, such as the wood stove for heating and the propane required for cooking as well as the lack of electricity. For this reason I find that the tenants have not incurred a loss for these expenses due to the landlord violating the tenancy agreement as it is clearly indicated in the agreement signed by both tenants that they are responsible for their own living expenses including for cooking, lighting and heating.

Regarding the tenants' monetary claim for pain and suffering, I find that the tenants did not provide any documentary evidence to support their claim for pain and suffering, which they have labeled as Post Traumatic Stress Disorder, such as a diagnosis from a medical physician or other type of professional. I find that the tenant only provided pictures showing the condition of the rental to support this monetary claim and I find that the tenants did not provide any evidence that they took any steps to mitigate their pain and suffering related to the condition of the rental unit during the term of the tenancy. Finally, I find that the tenants have not provided any evidence to prove the actual

amount required to compensate the tenants for any pain and suffering endured throughout the tenancy.

For the above reasons, the tenants' monetary claim is dismissed, without leave to reapply.

Section 48 of the *Act* allows a landlord to issue a One Month Notice to End Tenancy for Cause to a tenant if they are ending their employment.

Section 48 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice. As the tenant disputed this notice on July 20, 2018, and since I have found that the One Month Notice was served to the tenants on July 11, 2018, I find the tenants have applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*.

The landlord bears the burden of demonstrating on a balance of probabilities that the tenants employment has ended.

I have reviewed all documentary evidence and the affirmed testimony of both parties and I find that the tenants have not disputed that their employment has ended with the landlord, the tenants only disputed the amount of time required to vacate the rental unit.

For the above reasons, I find the landlord has sufficient grounds to issue the One Month Notice and to end this tenancy for cause. Therefore, the Application to set aside the One Month Notice is dismissed, without leave to reapply.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the *Act*. I find that the One Month Notice complies with section 52 of the *Act*.

For these reasons, I grant a two (2) day Order of Possession to the landlord.

As this tenancy is ending, I find the remainder of the tenants' claims for emergency repairs, to suspend or set conditions on the landlord's right to entry and to provide services or facilities required by law are no longer applicable and I dismiss them, without leave to reapply.

Conclusion

I dismiss the tenants' Application in its entirety, without leave to reapply.

I grant an Order of Possession to the landlord **effective two days after service of this Order** on the tenant. Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 05, 2018

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Residential Tenancy Branch