



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, CNC, CNL, FF

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for cause pursuant to section 55;
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

The tenants' applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenants did not attend. The landlord attended the hearing via conference call and provided undisputed affirmed testimony.

At the outset, the landlord stated that she was not served with the tenants' application for dispute and was not aware of the tenants' issues. The landlord also stated that the tenants had provided notice to end the tenancy and vacated the rental unit at the end of August 2018.

The landlord provided undisputed affirmed testimony that the tenants were served with the notice of hearing package and the submitted documentary evidence via Canada

Post Registered Mail on July 19, 2018 and has provided copies of the Canada Post Customer Receipt and Tracking labels as confirmation.

I accept the undisputed evidence of the landlord and find that as a result of not being served with the tenants' application for dispute find that the tenants failed to properly serve the landlord as per sections 88 and 89 of the Act. As such, the tenants' application is dismissed with leave to reapply for lack of service.

#### Preliminary Issue(s)

On the landlord's application, I find based upon the undisputed affirmed evidence of the landlord that the tenants were properly served via Canada Post Registered Mail on July 19, 2018 and is deemed served as per section 90 of the Act.

I waited until 12 minutes past the start of the scheduled hearing time in order to enable both parties to connect with this teleconference hearing.

Rule 7 of the Rules of Procedure provides that:

#### **7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

#### **7.2 Delay in the start of a hearing**

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

#### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

#### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The landlord stated that although the tenants have vacated the rental unit at the end of August 2018, the landlord still seeks recovery of the filing fee. The hearing shall proceed on the landlord's application for dispute.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause and recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord provided undisputed affirmed testimony that on June 27, 2018, the landlord served the tenants with the 1 Month Notice dated June 27, 2018 by posting it to the rental unit door with a witness. The 1 Month Notice sets out an effective end of tenancy date of July 31, 2018 and that it was being given as:

- the tenant is repeatedly late paying rent;
- 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 or the landlord.

No details of cause were listed on the 1 month notice.

The landlord provided undisputed affirmed testimony that the tenants were repeatedly late paying rent after the 1<sup>st</sup> day of each month when rent was due:

|               |                               |
|---------------|-------------------------------|
| February 2018 | Rent paid on February 2, 2018 |
| May 2018      | Rent paid on May 2, 2018      |
| June 2018     | Rent paid on June 4, 2018     |

The landlord also provided affirmed testimony claiming that the tenants were smoking marijuana on the rental premises.

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

Section 47(1) (b) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has been repeatedly late paying rent.

The landlord provided undisputed affirmed evidence that the tenants were repeatedly late paying rent on:

|               |                               |
|---------------|-------------------------------|
| February 2018 | Rent paid on February 2, 2018 |
| May 2018      | Rent paid on May 2, 2018      |
| June 2018     | Rent paid on June 4, 2018     |

On this basis, I find that the landlord has provided undisputed evidence that the tenants were repeatedly late paying rent as claimed. On this basis, I find that the landlord has established a claim for an order of possession. As such, no further action is required for the remaining details of cause listed on the 1 month notice. I decline to issue an order of possession as the landlord has provided undisputed affirmed evidence that the tenants had vacated the rental unit at the end of August 2018 and the landlord has possession currently of the rental unit.

The landlord having been successful is entitled to recovery of the \$100.00 filing fee.

### Conclusion

The landlord is granted a monetary order for \$100.00.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 04, 2018

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Residential Tenancy Branch