



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** CNC

### **Introduction**

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

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 landlord confirmed receipt of the tenants' dispute resolution application ('Application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the Application and evidence.

The tenants confirmed that they were personally served with a 1 Month Notice on June 30, 2018. Accordingly, I find the tenants duly served with the 1 Month Notice, pursuant to section 88 of the *Act*.

### **Preliminary Issue – Landlord's Evidence**

The tenants testified in the hearing that they did not receive the landlord's evidence. The landlord confirmed in the hearing that the tenants were not served with the landlord's evidence package.

Rule 3.15 of the RTB's Rules of Procedure establishes that "the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the

applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing"

The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first

This evidence was not served within the timelines prescribed by rule 3.15 of the Rules. In this case, the landlord admits that the tenants were not served with the landlord's evidence package. On this basis, the landlord's evidence will be excluded for the purposes of this hearing.

An exception was made during the hearing to allow late evidence to be submitted by both parties. I allowed both parties to fax a copy of the tenancy agreement by 4:00 P.M. of the next business day following the hearing.

### **Issues(s) to be Decided**

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

### **Background and Evidence**

This fixed-term tenancy began on April 1, 2018, with monthly rent set at \$1,200.00. While the landlord testified that the rent is due on the 30th day of each month, the tenants testified that rent was due on the 1st day. The tenants are still residing at the rental unit.

The landlord issued the notice to end tenancy providing the following grounds:

1. The tenant is repeatedly late paying rent
2. The tenant or a person permitted on the property by the tenant has:
  - i) significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - ii) seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

3. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has or is likely to:

- i) adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant;
- ii) jeopardize the health or safety or lawful right of another occupant or the landlord;

The landlord testified that the tenants have been repeatedly late in paying their rent. The landlord has requested post-dated cheques, which the tenants have not provided to the landlord. The landlord testified that the tenants paid their June, July, and August 2018 rent late.

Additionally the landlord testified that the tenants had disregarded the rules by allowing a pet into their rental unit despite the no pet policy, and by smoking on the property.

The landlord testified that the tenants' behaviour disturbed others, including their repeated use of "the F word". The landlord testified that an incident took place in May of 2018 when the tenants had threatened another tenant upstairs, and the police had attended. The tenants admit that an argument had taken place with another tenant over laundry.

The tenants dispute that this tenancy should end on the grounds provided by the landlord and that they were repeatedly late in paying rent. The tenants provided receipts for the rent payments to the landlord.

### **Analysis**

Section 46 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. The tenants filed their application on July 10, 2018, 10 days after the date the tenants received the 1 Month Notice. As the tenants filed their application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy.

Although the landlord testified that the police had attended the residence due to an incident that had taken place, I am not satisfied that the landlord had provided sufficient

evidence to support that the tenants, or a person allowed onto the property by the tenants, had engaged in any illegal activity. The tenants are not currently charged with any offences. I find that the landlord has not provided sufficient proof of any illegal activity, and accordingly I find that an Order of Possession cannot be granted on these grounds.

The landlord also indicated that the tenants had significantly interfered with, or unreasonably disturbed another occupant or the landlord. Although the tenants admit that they were a party to an argument that had taken place, I am not satisfied that the examples provided by the landlord, alone, are sufficient to support that the tenants significantly interfered with, or unreasonably disturbed another occupant to the extent that this tenancy should end on these grounds. On this basis, I am not allowing an Order of Possession to be granted on these grounds.

The landlord also testified that the tenants smoked on the property, and had allowed a pet despite the policies and rules that prohibit these two things. Despite these claims, I am not satisfied that the landlord had met their burden of proof to demonstrate that the tenants have smoked on the property or had a pet. Accordingly, I am not allowing an Order of Possession on the grounds that the tenants have seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Lastly the landlord is requesting an Order of Possession on the grounds of repeated late rent payments, which the tenants dispute. I note the wording of RTB Policy Guideline #38, which provides the following guidance regarding the circumstances whereby a landlord may end a tenancy where the tenant is repeatedly late paying rent.

*Three late payments are the minimum number sufficient to justify a notice under these provisions...*

*However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late...*

The burden is on the landlord to provide evidence to support that the tenants were repeatedly late in paying rent. Despite the conflicting testimony of when the actual rent payments were due, I am not satisfied that the landlord had provided sufficient evidence to support pattern of late payment of rent throughout the months leading up to the landlord's issuance of this 1 Month Notice. On this basis, I am not allowing an Order of Possession on the grounds of repeated late rent payments.

Given that I do not find the landlord has met their burden of proof to justify that, on a balance of probabilities there is sufficient cause to end this tenancy on the grounds provided on the 1 Month Notice, I grant the tenants' application to cancel the notice to end tenancy.

The tenancy will continue until ended in accordance with the *Act*.

**Conclusion**

The landlord's 1 Month Notice to End the Tenancy dated June 30, 2018 is cancelled and of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

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 6, 2018

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Residential Tenancy Branch