



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC OLC FFT

### Introduction

This review hearing dealt with the tenant's 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;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for the application from the landlord pursuant to section 72.

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.

As both parties were present service of documents was confirmed. The tenant confirmed receipt of the 1 Month Notice dated June 30, 2018 on that date. The landlord confirmed receipt of the tenant's application for dispute resolution of June 30, 2018 and evidence. The landlord confirmed they had not served any evidence of their own. The landlord confirmed receipt of the Review Consideration Decision and notice of review hearing. Based on the undisputed evidence of the parties I find that all materials were served on the respective parties pursuant to sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the August 24, 2018 decision and order be affirmed? If not should the 1 Month Notice be cancelled?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Are the tenants entitled to recover the filing fee from the landlord?

### Background and Evidence

The tenant first moved into the rental unit in February, 2004. The current monthly rent is \$400.00 payable on the first of each month. The landlord purchased the building in April, 2017 and assumed the tenancy. The rental unit is a basement suite in a detached home. The landlord has never resided at the rental building and separate occupants reside in the upstairs floor.

The landlord testified that since they assumed the tenancy they have dealt with multiple complaints by both the tenant and the upstairs occupants regarding their tenancies. The landlord said that the upstairs occupants have complained of the tenant banging on the ceiling with a broom on multiple occasions at all manner of hours. The landlord said that all of the various complaints were made verbally and they have no written records. The landlord testified that in addition they have been contacted by the municipality and informed that the rental suite is not an authorized residence and that they will need to have the suite inspected. The landlord said that the notice from the municipality was by phone call and they have no written evidence of the proposed inspection.

The landlord issued the 1 Month Notice indicating the reasons for the tenancy to end as:

*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;*
- *put the landlord's property at significant risk.*

The tenant disputes the reasons provided on the 1 Month Notice.

The tenant testified that the portion of her application seeking an order that the landlord comply deals with monthly payment of the rent. The tenant said that the landlord has accepted only cash payments and has not provided receipts. The tenant said that the landlord has rectified the situation prior to the hearing and has issued receipts for rent payments. The landlord testified that they would accept rent payments by cheque or other methods.

## 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. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenants or a person permitted on the property by the tenants has significantly interfered with or unreasonably disturbed another occupant, has caused serious jeopardy to the health or safety of the landlord or others, or that they have put the rental property at risk.

I find, on a balance of probabilities, that the landlord has not established cause for ending this tenancy. The landlord made some submissions about complaints regarding the tenant's behaviour but I find that there is insufficient evidence that the conduct warrants ending this tenancy. I find that the landlord's testimony that they have received complaints to be insufficient to show that the tenant's behaviour has significantly interfered with or unreasonably disturbed other occupants. In the absence of written records of the complaints, independent witness statements or other evidence in support of the landlord's submissions I find that they have not met their evidentiary onus.

Similarly, I find that the landlord's testimony that they have been informed by the municipality that the rental suite is illegal to not be supported in the evidence. The landlord confirmed in their own testimony that they are unaware of the next steps that the municipality will take and what the timeline may be.

I do not find that the landlord has provided sufficient evidence to meet the burden of proof that the tenant's actions have given rise to cause to end this tenancy at this time. Consequently, I cancel the decision and order of August 24, 2018 and issue a new decision to dismiss the landlord's 1 Month Notice.

The parties have testified that there is no longer a need for an order that the landlord comply as the landlord has confirmed they will accept rent payments by cheque and that they will issue receipts for all cash payments.

As the tenants' application was successful the tenants may recover their \$100.00 filing fee for their application. As this tenancy is continuing the tenants may satisfy this monetary award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

Conclusion

The decision and order of August 24, 2018 is cancelled and replaced by this decision.

The 1 Month Notice of June 30, 2018 is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenant is awarded a monetary award of \$100.00. The tenant may satisfy this award by deducting that amount from their next scheduled monthly rent payment.

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 18, 2018

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Residential Tenancy Branch