



# Dispute Resolution Services

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## Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD.  
and [tenant name suppressed to protect privacy]

### **DECISION**

Dispute Codes MT, CNC, OLC, RP, FFT

#### Introduction

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

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- 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;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- authorization to recover their filing fee for this 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 Tenant SMC (the tenant) confirmed that they received the 1 Month Notice posted on the tenant's door by the landlord on September 28, 2018, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that they received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on October 15, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*.

The tenant said that they sent some of their written and photographic evidence to the landlord with their original hearing package. As the landlord confirmed receipt of this evidence, I find that the landlord was duly served with this initial evidence in accordance with section 88 of the *Act*. The tenant testified that the remainder of their written evidence and almost all of their photographic evidence was provided to the landlord by uploading it in an email to the landlord's website. The landlord testified that they had not received this information, as only one photograph had been included in the tenants' original evidence sent to the landlord. For this reason, I have not considered the tenants' photographic evidence and that portion of the tenants' written evidence not provided to the landlord.

The landlord testified that they sent the tenants a copy of their written evidence by registered mail on November 14, 2018. In accordance with sections 88 and 90 of the *Act*, this written evidence would have been deemed served to the tenants on November 19, 2018, three days before this hearing. The tenant said that they only received the landlord's written evidence package the day before this hearing. The tenant said that Tenant MA had reviewed this written evidence, but the tenant had not. The Residential Tenancy Branch's Rules of Procedure require Respondents to provide Applicants with copies of their

written evidence 7 days before a hearing. As this has not occurred, I advised the parties that I would not be considering the landlord's written evidence.

Issues(s) to be Decided

Should an extension of time be granted to the tenants for applying to cancel the landlord's 1 Month Notice? If so, should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should orders be issued against the landlord to repair the rental unit? Should any other orders be issued with respect to this tenancy. Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy in a multi-unit rental property commenced on March 1, 2012, initially as a one-year fixed term. When the initial term expired, the tenancy continued as a month-to-month tenancy. Monthly rent was initially set at \$1,000.00, payable in advance on the first of each month. The current monthly rent is \$1,114.00. The tenant gave undisputed sworn testimony that the landlord continues to hold the tenants' \$550.00 security deposit paid when this tenancy began. This amount exceeds the maximum amount that could have been charged for this deposit by \$50.00.

The tenants entered into written evidence a copy of a doctor's note to support their claim that they were unable to complete the application for dispute resolution within the time frame allowed under the Act due to illness. They did submit the application for dispute resolution on October 12, 2018, one day late.

The landlord's 1 Month Notice seeking an end to this tenancy by October 12, 2018 identified the following reason for ending this tenancy for cause:

*Tenant has engaged in illegal activity that has, or is likely to:*

- *damage the landlord's property;*

In the details of the 1 Month Notice, the landlord identified

*TENANT DAMAGED THE CEILING AT THE LIVING ROOM, A LOTS OF SMALL HOLES ARE ON THE CEILING, MISSING 7 BI-FOLD DOORS, THAT SHOULD STAY ON CLOSETS AT BOTH BEDROOMS AND HALLWAYS.*

(as in original)

At the hearing, the landlord was unable to identify any illegal activity or likely illegal activity that the tenants were undertaking that gave cause to the landlord's issuance of the 1 Month Notice. The landlord testified that the tenants had damaged the rental unit and had removed bi-fold doors in the rental unit.

With respect to the repairs identified in the tenant's' application, the tenant testified that the landlord commenced repairing problems in their bathroom on the day before this hearing. The landlord confirmed that plumbers had undertaken work on the tenants' bathroom and that workers would be returning to the rental unit on November 28, 2018. The tenant said that they were satisfied that measures were being taken to repair damaged tile in their bathroom.

The tenant testified that there were two kitchen drawers that were not working properly and were coming apart. The landlord said that they had visited the rental unit two weeks before this hearing with the landlord's maintenance person and the landlord was satisfied that "everything was working properly." The landlord testified that a maintenance person could repair any damage that needed fixing by the middle of December if an order were issued to that effect.

The tenant also observed that other rental units in this building had been renovated and carpets had been replaced in those units. The tenant said that the carpets were not in very good condition when this tenancy began and they are even worse now after more than six years of wear and tear. The tenant asserted that landlords were under an obligation to replace carpets in a rental suite every ten years, and that the carpet in their rental unit was almost 20 years old.

The tenant also asked that an order be issued against the landlord to discontinue harassing the tenants and a person who the tenant hires to wash the tenants' laundry in the laundry room in this rental building.

#### Analysis - Landlord's 1 Month Notice

Section 66(1) of the *Act* allows a tenant to apply for an extension of time to apply for dispute resolution if there are exceptional circumstances that prevented them from submitting an application within the time limits established under the *Act*. In this case, the tenants provided some written evidence from a doctor regarding their claim that illness prevented them from filing for dispute resolution within the 10-day time frame for doing so, which in this case was October 11, 2018. I have accepted the tenants' undisputed request for an extension of time to file their application for dispute resolution, which they maintained occurred due to exceptional circumstances.

In coming to this determination, I also note that if I were to have denied the tenants' application for an extension of time to file their application, the landlord would still have had to demonstrate that they issued the 1 Month Notice in accordance with sections 55(1) and 52 of the *Act*. In this case, I would not have been able to uphold the landlord's 1 Month Notice as the landlord confirmed that the tenants were not involved in any illegal activity, the reason cited for ending this tenancy on the landlord's 1 Month Notice.

For these reasons, I allow the tenants' application to cancel the 1 Month Notice. This tenancy continues until ended in accordance with the *Act*.

#### Analysis- Tenants' Request for the Issuance of Orders against the Landlord

The deficiencies in the provision of evidence by both parties limits my ability to issue the orders requested by the tenants. As mentioned at the hearing, I cannot issue orders requiring the landlord to cease issuing notices to end tenancy or to prevent the landlord from raising concerns about people allowed in the rental building by the tenant, as circumstances may arise whereby the landlord may have sufficient grounds to issue such notices.

Section 32(1) of the *Act* establishes a landlord's responsibilities in maintaining rental premises as follows:

**32** (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

*(a) complies with the health, safety and housing standards required by law, and*

*(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

At the hearing, the parties agreed that steps are underway to address the repair concerns the tenants have raised with respect to their bathroom tiles and plumbing issues in their bathroom.

The tenants appear to have misinterpreted a provision in the Residential Tenancy Branch's Policy Guideline #40, regarding the Useful Life of Building Elements. While this policy guideline establishes guidance to arbitrators with respect to claims for damage and sets the expected life of various elements of a rental tenancy, including the expected useful life of carpeting, this guidance is not intended as a means of forcing landlords to replace items which exceed the anticipated useful life. In this case, the tenant did not provide sufficient evidence to demonstrate that the existing carpet in their rental unit requires repair or replacement, having regard to the age, character and location of the rental unit, even though it may be older than the 10-year useful life established in Policy Guideline #40. For this reason, I dismiss the tenants' application for an order requiring the landlord to provide the tenants with upgraded carpeting in their rental unit.

I have also considered the tenants' request to have kitchen drawers repaired. Although the landlord maintained that the drawers in the tenants' kitchen were working properly when the landlord and their maintenance person attended the rental unit, I find that working properly differs from having kept them in a state of decoration and repair that makes them suitable for occupation and use by the tenants. As I found the tenants' evidence in this regard more compelling than that provided by the landlord, I order the landlord to undertake repairs to kitchen drawers in this rental unit by December 15, 2018. In the event that these repairs remain outstanding by the time monthly rent becomes owing for January 2019, I order that the tenants' rent be reduced by \$ 50.00 per month until the month these repairs have been completed.

As the tenants' application has been partially successful, I allow the tenants to recover their \$100.00 filing fee from the landlord.

The security deposit charged to the tenants at the beginning of this tenancy exceeded \$500.00, one-half of the monthly rent charged of the tenants when this tenancy began. For this reason and in accordance with the *Act*, I issue a monetary award in the amount of \$50.00 to the tenants, the amount they were overcharged when the landlord collected the \$550.00 security deposit from them at the beginning of this tenancy.

### Conclusion

I allow the tenants' application to cancel the landlord's 1 Month Notice. The 1 Month Notice is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I order the landlord to undertake repairs to kitchen drawers in this rental unit by December 15, 2018. In the event that these repairs remain outstanding by the time monthly rent becomes owing for January

2019, I order that the tenants' rent be reduced by \$ 50.00 per month until the month after these repairs have been completed.

I issue a monetary Order in the tenants' favour in the amount of \$150.00 as outlined above. The tenant is provided with these Orders, which may be recovered by withholding monthly rent that becomes due for this tenancy or by way of serving this Order to the landlord as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: November 22, 2018

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Residential Tenancy Branch