



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, DRI, LAT, LRE, MNDCT, OLC, PSF, RR, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), to dispute a rent increase, for authorization to change the locks, to suspend or restrict the Landlord’s right to enter, for monetary compensation, for an Order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, for an Order for services or facilities to be provided as required by the tenancy agreement or law, for a reduction in rent for repairs, services or facilities agreed upon but not provided, and for the recovery of the filing fee paid for this application.

Both Landlords were present for the teleconference hearing, although Landlord D.P. spoke on behalf of both of the Landlords. One of the Tenants was also present for the duration of the teleconference hearing and spoke on behalf of both Tenants.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence. The Tenant confirmed receipt of a copy of the Landlords’ evidence package. Neither party brought up any concerns regarding service. As such, I find that both parties were duly served in accordance with Sections 88 and 89 of the *Act*.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary Matters

As stated in rule 2.3 of the *Residential Tenancy Branch Rules of Procedure*, claims on an Application for Dispute Resolution must be related to each other and unrelated claims may be dismissed. Due to the urgent matter of the dispute over the One Month Notice, I exercise my discretion to dismiss the remainder of the Tenants' claims, with leave to reapply. The parties were informed that the only matter to be considered through the dispute resolution proceeding was the Tenants' application to cancel the One Month Notice as well as their claim for the recovery of the filing fee.

### Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, are the Landlords entitled to an Order of Possession?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The parties were in agreement as to the details of the tenancy. A tenancy agreement was signed set to begin on March 1, 2016, although the Tenants moved in early around February 20, 2016. A security deposit of \$337.50 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms these details as stated by the parties.

The Tenant stated that current monthly rent is \$750.00, due on the first day of each month, while the Landlord stated that monthly rent is \$727.98 plus \$22.40 for cable.

Both parties submitted many pages of documentary evidence regarding the claims of the Tenants on the Application for Dispute Resolution. The evidence from both parties that was relevant to the dispute over the One Month Notice was considered as part of this decision.

On November 25, 2018, the Landlords served the Tenants in person with a One Month Notice. The Tenant confirmed receipt of the One Month Notice on this day.

The One Month Notice was submitted into evidence and states the following as the reasons for ending the tenancy:

- 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
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The Landlord testified that the Tenants are in breach of a material term of the tenancy agreement due to smoking outside the rental unit in a common area. The Landlord submitted that the male tenant smokes in the lower level entrance area which is the access for the Tenants as well as neighbouring tenants that reside in the second lower level rental unit. He referred to the tenancy agreement which states that the rental unit is a 'no smoking unit.'

The Landlord provided further testimony that the Tenants are causing disturbance to the residents that live in the second rental unit by harassing them, shouting at them and taking away their right to quiet enjoyment of the rental unit.

The Landlord also stated that there has been issues with parking at the rental property that has caused disturbances between the Tenants, Landlord and the other tenants on the property. He stated that there are no reserved parking spots as it is street parking, but that the Tenants have aggressively yelled and confronted the other tenants regarding parking spots.

The Landlord also stated that the Tenants have been harassing the neighbouring tenants, commenting on their clothing and taking photos of them without permission. The Landlord stated that one of the neighbouring tenants is pregnant and the harassment has caused stress that has led to the tenant being hospitalized.

The Landlord testified as to a letter provided to the Tenants which gave them a deadline of November 17, 2018 to stop smoking on the property and stop harassing the neighbours. The Landlord stated that both issues have continued since the letter, which is why the Tenants were served with the One Month Notice.

Two letters were submitted into evidence by both parties. In the first letter dated October 18, 2018, the Landlord advises the Tenants of their breach of a material term of the tenancy agreement. The letter further states that the tenancy agreement is clear that this is a non-smoking rental unit and that the tenancy may be ended should the issue not be resolved by November 17, 2018.

The second letter, also dated October 18, 2018, states that the Tenants must clean up the garden and backyard by November 17, 2018.

The Tenant stated that they understood that they were not to smoke inside the rental unit, as indicated on the tenancy agreement. She testified that they were told they could smoke outside, as long as it was not in front of the Landlord's children. The Tenant stated that the male Tenant smokes in the far corner of the property. She further stated that she was not aware this was a material term of the tenancy agreement. She referenced emails submitted into evidence from the Landlord in which the neighbouring tenant tells the Landlord about the male Tenant smoking outside. She noted that the emails are written based on hearsay and not first-hand information.

The Tenant agreed that parking has been an issue as it can be difficult to find a spot to park on the street. She stated that the Landlord called a meeting in February 2018 in which they met with the Landlord and other tenants to discuss the parking situation.

The Landlord submitted a number of emails into evidence from the neighbouring tenants, as well as a statement from the tenant outlining events that have occurred. The emails are from October and November 2018 and state that the Tenants have been harassing the neighbouring tenant and his family.

The emails outline incidents such as a time when the female Tenant shouted at the wife of the neighbouring tenant when she put some belongings on the chair outside the rental units. The neighbouring tenant stated that the female Tenant was threatening to his wife and took a photo of her.

In the emails the neighbouring tenant further states that the female Tenant jumps up when they go outside their unit and that the Tenants have an "offensive and harassing attitude". They also note that the Tenants watch the neighbouring tenant's family when they are outside and make fun of them, as well as talk and laugh loudly in common areas which causes ongoing disturbance.

In the email the neighbouring tenant describes the harassment as the female Tenant speaking aggressively, using offensive language, watching them, making fun of them, and taking photos. The emails also note the male Tenant has been seen smoking outside of the rental units. The neighbouring tenant notes a time when the female Tenant accused his wife of hitting their window. The emails further state that the neighbouring tenant's pregnant wife has been in the hospital since November 25, 2018 due to stress from the harassment.

The Landlord stated that the Tenants told him they did not smoke when they entered into the tenancy agreement, but they soon found out that the male Tenant was smoking outside. He stated that the other tenants are unable to keep their door open due to the smell of smoke and have therefore lost their quiet enjoyment of their rental unit. He stated that he has personally seen the male Tenant smoking outside the rental unit on two occasions.

The Landlord provided testimony on the incident mentioned in one of the emails from the neighbouring tenant in which the wife of the tenant put her belongings on the chair outside the rental units and the female Tenant harassed her and took photos. He also stated that the Tenant will point at the neighbouring tenants and make fun of them.

The Tenant stated that the emails from the other tenant are full of incorrect information and that they have never harassed the neighbours in any way. She stated that the neighbouring tenants often look into their rental unit and leave the outdoor light on. She further stated that she is met with resistance when trying to resolve issues with them, such as asking them to turn the light off. She also noted that the male tenant next door is often away so is providing information based on what his family tells him, as he does not have first-hand knowledge of what has occurred.

### Analysis

Based on the testimony and evidence of both parties, I find as follows:

Section 47(4) of the *Act* states that a tenant has 10 days in which to dispute a One Month Notice. As the One Month Notice was received on November 25, 2018 and the Tenants filed an amendment to their application to dispute the notice on November 27, 2018, they applied within the timeframe provided by the *Act*. As such, the matter before me is whether the reasons for the One Month Notice are valid.

As stated in rule 6.6 of the *Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The One Month Notice provided two main reasons for ending the tenancy. The first, pursuant to Section 47(1)(d), is that the Tenants have significantly interfered with, unreasonably disturbed, or seriously jeopardized other occupants or the landlord. The second reason, pursuant to Section 47(1)(h), is that the Tenants have breached a material term of the tenancy agreement.

The Landlord provided testimony regarding the Tenants' harassment of the neighbouring tenants and also submitted statements and emails from the neighbouring tenants outlining events that have occurred. The Tenant stated that this was a misrepresentation of what occurred and that they have not conducted any behaviour that may be considered harassing.

When parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with the onus to provide sufficient evidence over and above their testimony to establish their claim.

The Landlord submitted many emails from the neighbouring tenant which outline his perspective of what has occurred between both parties that reside in the lower level rental units. However, I do not find these emails to be reliable or compelling evidence, as much of the information seems to be second-hand accounts of what occurred which was then passed on to the Landlord. I also find that the emails include general statements of behaviour such as describing the Tenants as engaging in aggressive or offensive behaviour without much explanation as to the exact behaviour.

As the Tenants were not in agreement as to the information provided in the neighbouring tenant's emails, I find that the Landlord did not establish that the events occurred as described by the neighbouring tenant. The emails do not provide enough specific information for me to be satisfied that the Tenants are engaging in behaviour that would be considered harassment and that this behaviour is significantly disrupting the neighbours' right to quiet enjoyment.

Although the Landlord stated that the harassment has caused one of the neighbours to enter the hospital, I find insufficient evidence to connect the behaviour or actions of the Tenants to the medical condition of the neighbour.

As such, although the Landlord has claimed harassment from the Tenants to the neighbouring tenants, I fail to find sufficient evidence that establishes, on a balance of probabilities, that this is occurring. I also note that the One Month Notice states that the Tenants are causing *significant* interference, *unreasonable* disturbance or *seriously* jeopardizing the health or safety of another occupant or the landlord.

Although the parties may be engaging in disagreements or other disputes, I do not find that the Landlord met the burden of proof for me to be satisfied that any conflict occurring between the Tenants and the neighbours has reached the level needed for the tenancy to end.

The Landlord also testified that the Tenants are smoking outside which is unreasonably disturbing the other tenants. However, the Tenants stated that the area where the male Tenant smokes is away from the property so as not to cause disturbance to others. Again, I do not find sufficient evidence to establish that the Tenant smoking outside of the rental unit is causing significant disturbance to others.

As for the tenancy ending due to a breach of a material term of the tenancy agreement, I refer to *Residential Tenancy Policy Guideline 8: Unconscionable and Material Terms* which provides a definition of a material term as follows:

*A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.*

While the Landlord testified that no smoking was a material term of the tenancy agreement, the Tenant did not agree. She stated her understanding that they were not to smoke inside of the rental unit which she said they do not do.

Based on the wording of the statement regarding smoking in the tenancy agreement, I do not find it to be a material term and instead find the wording to indicate that smoking is not allowed inside the rental unit. As such, I cannot find that smoking outside of the rental unit is a breach of a material term of the tenancy agreement.

Based on the above analysis, I find that the Landlord did not meet the burden of proof to establish that the reasons for the One Month Notice are valid. Therefore, the Tenants were successful in their application to cancel the One Month Notice. The One Month Notice dated November 25, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

As the Tenants were successful in their application, I award the recovery of the filing fee in the amount of \$100.00. The Tenants may deduct \$100.00 from their next monthly rent payment, pursuant to Section 72 of the *Act*.

Conclusion

The One Month Notice dated November 25, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Pursuant to Section 72 of the *Act*, the Tenants may deduct \$100.00 from their next monthly rent payment to recovery the filing fee paid for the Application for Dispute Resolution.

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: December 24, 2018

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Residential Tenancy Branch