



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### 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”).

One of the Tenants was present for the teleconference hearing, as was the Landlord and his spouse (the “Landlord”). The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence. The Landlord confirmed that they did not submit any documentary evidence.

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.

### 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, is the Landlord entitled to an Order of Possession?

### Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began in November 2017. Monthly rent is \$1,000.00 and a security deposit of \$500.00 was paid at the outset of the tenancy.

The Landlord provided testimony that on November 30, 2018 they served the Tenants with a One Month Notice. 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
- Tenant or a person permitted on the property by 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
  - Jeopardize a lawful right or interest of another occupant or the landlord

The Tenant confirmed receipt of the One Month Notice on November 30, 2018.

The Landlord provided testimony that they have asked the Tenants not to smoke but that they continue to smoke in the rental unit. The Landlord noted that they have a family member living upstairs who has a medical condition that is impacted by smoke. The Landlord also stated that the police attend the rental unit often and that there is constant noise coming from the rental unit.

The Landlord stated that one of the Tenants used inappropriate language with them and that many people have stayed at the rental unit without permission. The Landlord also noted that there is an issue with garbage piling up outside the rental unit causing a smell. The Landlord also testified that the Tenants have pets despite not being allowed.

The Tenant provided testimony that she does not smoke and that the other tenant only smokes outside of the rental unit. She also stated that they once received a text message from the Landlord regarding the smell of smoke when they were not even home.

The Tenant agreed that the police were called one time due to an incident between the second tenant and a person who is no longer residing at the rental unit. The Tenant stated that they do not have pets and that they keep garbage to a minimum at the request of the Landlord. The Tenant agreed that one time the other tenant used inappropriate language in a text message to the Landlord and that since that time she has been the primary contact for communication with the Landlord.

The Tenant submitted into evidence text messages with the Landlord which she stated occurred prior to receiving the One Month Notice. In the text messages the Landlord states that they need the rental unit for their family members beginning January 30, 2018. In another text message, the Landlord suggests the Tenants move if they are not happy with the noise caused by the Landlord's children upstairs.

### Analysis

Section 47(4) of the *Act* states that a tenant has 10 days in which to dispute a One Month Notice. As the Tenants received the One Month Notice on November 30, 2018 and filed an Application for Dispute Resolution on December 4, 2018, they applied within the timeframe provided under the *Act*. As such, the matter before me is whether the reasons for the One Month Notice are valid.

As stated by rule 6.6 of the *Rules of Procedure*, when a tenant applies to cancel 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 Landlord provided testimony as to a number of reasons why the One Month Notice was served to the Tenants. However, the Tenant was not in agreement as to all of the claims as stated by the Landlord. When two parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with the burden of proof to submit sufficient evidence to support their claim.

The Landlord did not submit any documentary evidence that would establish their testimony and that they had cause to serve the Tenants with a One Month Notice. Although the Tenant stated that there was one time the police were called and one time in which inappropriate language was used while communicating with the Landlords, I do not find these issues significant enough to end the tenancy without further proof of ongoing or serious issues.

I am not satisfied that the Landlord has met the burden of proof to establish that the Tenants are unreasonably disturbing others, jeopardizing the health and safety of others

or that they are engaged in illegal activity that is causing concern for the rights of others on the rental property.

Therefore, I find that the Tenants were successful in their application to cancel the One Month Notice. The One Month Notice dated November 30, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

### Conclusion

The One Month Notice dated November 30, 2018 is cancelled and of no 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: January 17, 2019

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Residential Tenancy Branch