



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC DRI ERP MT MNDC MNR PSF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A participatory hearing, by teleconference, was held on May 30, 2019. The Tenants applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "*Act*").

Both parties attended the hearing and provided testimony. The Landlord confirmed receipt of the Tenants' application package and evidence. The Landlord did not submit any documentary evidence, and relied upon oral testimony for the hearing.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenants applied for multiple remedies under the *Act*, some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues before me deal with whether or not the tenancy is ending and whether or not the Tenants should be given more time to file this application. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the Tenants' application with the exception of the following ground:

- Are the Tenants entitled to more time to file their application to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”), and should the Notice be cancelled?

#### Issue(s) to be Decided

- Should the Tenants be allowed more time to make an application to cancel the Notice?
- Should the Notice be cancelled?
  - If not, is the Landlord entitled to an Order of Possession?

#### Background and Evidence

The Tenants acknowledged receiving the Notice on April 18, 2019. The Notice indicates the following reasons for ending the tenancy on the second page:

Tenant or a person permitted on the property by the tenant has:

- Put the Landlord’s property at significant risk.

Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:

- Damage the Landlords property.

The Landlord issued the Notice for several reasons. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether there are sufficient grounds to end the tenancy. In other words, my decision will focus on the first ground identified by the Landlord, as this ground is what my decision hinges upon and this is what the Landlord focused on in the hearing.

The Landlord testified that he issued the Notice because the Tenants have caused 3 floods in the rental unit. The Landlord stated that the Tenants were given permission quite some time ago to install a laundry machine in the house, and there were no issues for quite a while. However, the Landlord stated that this changed in May of 2018, when the washing machine installed by the Tenants started leaking and flooded the basement. The Landlord stated this was expensive to clean up.

Then, on September 6, 2018, the washing machine leaked again, and flooded the rental unit. The Landlord further stated that at this time, he entered into a verbal agreement with the Tenants that they would stop using the washing machine, to prevent any further flooding from happening. During the hearing, the Tenants acknowledge agreeing to stop using the washing machine on September 6, 2018, after the second flood occurred.

The Tenants stated that they kept the washing machine in place and stopped using it for a while. However, the Tenants also acknowledged that they again started using it, despite their agreement not to, and a 3<sup>rd</sup> flood occurred on April 10, 2019. The Landlord stated that it was at this time that he issued the Notice because he could no longer trust the Tenants, and they were repeatedly damaging his house. The Landlord stated that each time the house flooded, he had cleanup to do, and he had to repair drywall.

The Tenants stated that they were unaware that their washing machine was flooding until after it occurred.

### Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings with respect to whether there are sufficient grounds to end the tenancy.

#### *Application for More Time*

I note the Tenants have applied for more time to make an application to cancel the Notice. Given that the Tenants applied late, I find the Tenants' request to have more time to apply to cancel the Notice must be addressed before considering the remainder of the application.

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is **very strong** and **compelling**.

After reviewing the file before me, I note that the Tenants stated that they were late applying for this hearing because of severe anxiety. The Tenants stated they both also struggle with reading and writing, and had difficulty navigating the phone system and the application forms in order to get help. I note the Tenants visited their local MLA on April 26, 2019, which was only 8 days after receiving the Notice (which they acknowledge receiving on April 18, 2019). I also note the Tenants received help from the MLA office to properly complete this application. The Tenants applied on April 30, 2019, which was 12 days after they received the Notice. Although the Tenants were only entitled to 10 days to dispute the Notice under the *Act*, I find they are entitled to more time to file their application. I have considered the Tenants took action and sought help within the 10 day dispute period, and the Tenants were only 2 days late, in part because they had to obtain help filling out the forms. I find the Tenants reasons for applying late are sufficiently strong and compelling.

#### *1-Month Notice*

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

The Tenants entered into written evidence a copy of the Notice. The first issue the Landlord identified on this Notice was:

Tenant or a person permitted on the property by the tenant has:

- Put the Landlord's property at significant risk.

I note the Tenants were initially granted permission to install their own washing machine, which did not pose problems for a period of time. That changed in May of 2018, when the washing machine caused a flood. I note that after the second flood, on September 6, 2018, the parties both acknowledge that they formed an agreement where the Tenants would not use the washing machine, as it was clearly having reliability issues. The Tenants stated they agreed to not use the washing machine and they also acknowledge that they went ahead anyways and used it, despite this agreement. Subsequently, the washing machine flooded the basement again, and further damaged the house and drywall. I find the Tenants blatant disregard for the agreement they made (to not use the problematic washing machine) damaged the Landlord's property and put it at significant risk.

As such, I find the Landlord has sufficient cause to issue the Notice. The Tenants' application to cancel the Notice is dismissed. The tenancy is ending, under the Notice, as described below.

Given my findings on this matter, it is not necessary to consider the other grounds listed on the Notice.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice complies with the requirements of form and content. I find the Landlord is entitled to an order of possession effective **2 days** after service on the Tenants.

### Conclusion

The Tenants' application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective **2 days** after service on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order 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: May 31, 2019

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Residential Tenancy Branch