



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT, LRE

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on May 29, 2019 (the “Application”). The Tenants applied to dispute a One Month Notice to End Tenancy for Cause dated May 26, 2019 (the “Notice”). The Tenants also sought to suspend or set conditions on the Landlords’ right to enter the rental unit. The Tenants sought reimbursement for the filing fee.

The Tenants and Landlords appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules of Procedure, I told the Tenants at the outset that I would consider the dispute of the Notice and dismiss the request to suspend or set conditions on the Landlords’ right to enter the rental unit as this request is not sufficiently related to the dispute of the Notice. The request to suspend or set conditions on the Landlords’ right to enter the rental unit is dismissed with leave to re-apply. This does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence pointed to during the hearing and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlords be issued an Order of Possession?
3. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started January 01, 2015 and was for a fixed term ending December 31, 2015. The parties agreed rent is \$1,332.00 per month. Rent is due on the first day of each month.

The Notice was submitted as evidence. The grounds for the Notice are as follows:

1. Tenant or a person permitted on the property by the tenant has put the Landlord's property at significant risk.
2. Tenant has not done required repairs of damage to the unit;
3. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The parties agreed the Notice was served on Tenant A.R. in person May 26, 2019.

I asked the Landlords for their testimony and submissions on the first ground for the notice, that the Tenants or a person permitted on the property by the Tenants have put the Landlords' property at significant risk. Landlord L.S. said this might be an overstatement. He testified that there is debris around the yard of the rental unit. He submitted that the "risk part" is the amount of debris cluttering the yard. Landlord S.S. testified that there is clutter, garbage and alcohol containers in the yard. She said this attracts rodents and bears. She submitted that this is destroying the property and making it look horrible. Landlord S.S. said the Landlords have pictures for this.

This is the extent of the Landlords' submissions on this ground.

In relation to the second ground, that the Tenants have not done required repairs of damage to the unit, the Landlords testified as follows. The issue is the condition of the outside of the unit. The yard is the concern. The Tenants were asked to clean the yard. Plants in the yard have died. There are dog feces in the yard which is killing the grass. The Tenants were asked in writing to clean the yard May 22, 2019. This was the first written request. The previous requests were verbal.

This is the extent of the Landlords' submissions on this ground.

In relation to the third ground, that the Tenants breached a material term of the tenancy agreement and this was not corrected within a reasonable time after written notice to do so, the Landlords testified as follows. The Tenants were given notice to clean the yard with a timeline. The Tenants did not comply with this. There is still garbage and a bed frame in the yard. It was clear in the notice what the Tenants needed to do. The Tenants are not looking after the yard.

The Landlords could not point to what term in the tenancy agreement they were relying on for the third ground.

The Landlords pointed to the photos submitted as evidence. The Landlords further submitted as follows. Vegetation on the property has died due to lack of watering. The parking area on the property has been overgrown with weeds and has a pile of pine cones on it.

The Tenants testified as follows in reply. Everything in the yard has been cleaned up. It is the plum trees and chicken coop next door that attracts animals and rodents to the property. They have not put the property at significant risk. There is no damage to the outside of the rental unit. The grass is dying because there hasn't been any rain. The plants have died because of the snow. They received the May 22, 2019 letter. They did clean up the yard that whole week. The photos they submitted were taken May 26 and 27, 2019. The Landlords are responsible for broken glass on the deck. The Landlords said they would clean this up, but it remains. They have lived at the rental unit for four and a half years, the issues raised are normal wear and tear. They do their best to maintain the yard.

I have reviewed the Landlords' written submissions. These state that the regional district attended the property and gave the Tenants a verbal warning about the state of the yard. The written submissions state that the Landlords inspected the yard on May

26, 2019 and found garbage bags, alcohol containers, a brush pile, a bed frame and dog feces.

I note that the written submissions include issues not raised during the hearing. I have considered the bases for the Notice to be as stated by the Landlords at the hearing as no further basis has been made clear to me.

### Analysis

The Landlords have the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules of Procedure. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

There is no issue that the Tenants received the Notice May 26, 2019 as the parties agreed about service. The Application was filed May 29, 2019, within the time limit for disputing the Notice set out in section 47(4) of the *Act*.

The Notice was issued pursuant to sections 47(1)(d)(iii), 47(1)(g) and 47(1)(h) of the *Act* which state:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...

(d) the tenant or a person permitted on the residential property by the tenant has...

(iii) put the landlord's property at significant risk...

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3)...within a reasonable time;

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so...

Section 32(3) of the *Act* states:

A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I am not satisfied based on the evidence submitted that the Landlords have proven that the Tenants have put the Landlords' property at significant risk. The use of the word "significant" in section 47(1)(d)(iii) indicates the high threshold that must be met to end a tenancy under this section. A tenancy cannot be ended under this section for circumstances that are minor or pose an insignificant risk.

The only evidence submitted about the state of the rental unit and property are a Condition Inspection Report and photos. The Landlords did not rely on the Condition Inspection Report during the hearing or explain this evidence. The copy submitted is difficult to read and not signed by the Tenants. I do not find this evidence compelling.

None of the photos submitted, including those taken prior to May 26, 2019, satisfy me that the Tenants have put the Landlords' property at significant risk. The items shown in the photos are not items I could conclude pose a risk to the property, without further evidence on this point. Nor can I conclude that the number of items shown in the photos is such that there is a risk to the property. I note that I cannot see where in the photos it shows an unusual amount of dog feces in the yard.

I do not accept that the state of the yard attracts bears or rodents as there is no evidence before me showing that this is the case.

I do not accept that the Tenants have caused the grass, shrubs or trees to die without further evidence showing this.

The photos may show that the rental unit and property could be tidier. However, I cannot find based on the evidence provided that the issue is anything more than an esthetic one. This does not justify ending the tenancy. The Landlords have failed to prove the first ground for the Notice.

In relation to the second ground, I do not accept that the Tenants have caused damage to the property. I do not find the photos support this. No other compelling evidence has

been submitted showing damage. I decline to uphold the Notice based on the second ground on this basis alone.

However, I also note the requirement that the Tenants have failed to repair damage within a reasonable time. There is no issue that the first written warning given to the Tenants about the yard was on May 22, 2019 with a deadline of May 26, 2019 to clean the yard. The Notice was served on May 26, 2019. Given the nature of the issue, I do not find four days to be a reasonable time to expect the Tenants to have cleaned the yard. This is particularly so when the May 22, 2019 letter is the first written notice provided to them about this issue. I do not find it relevant whether there were prior verbal warnings or not. If the issue was significant enough to warrant ending the tenancy, the Landlords should have been providing written warnings to the Tenants about this issue.

The Landlords have failed to prove the second ground for the Notice.

In relation to the third ground, Policy Guideline 8 deals with material terms and states in part at page one and two:

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.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

As stated above, it is the Landlords who have the onus to prove the grounds for the Notice. The Landlords could not point to which term in the tenancy agreement they were relying on for the third ground. Without this information, I cannot assess whether it is a material term or whether the term was breached.

I also note that the May 22, 2019 letter does not state that the Tenants have breached a material term of the tenancy agreement as required in Policy Guideline 8.

The Landlords have failed to prove the third ground for the Notice.

Given the Landlords failed to prove the grounds for the Notice, the Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenants have been successful in this application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. The Tenants can deduct \$100.00 from one future rent payment pursuant to section 72(2) of the *Act*.

### Conclusion

The Landlords have failed to prove the grounds for the Notice. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenants have been successful in this application, I award them reimbursement for the \$100.00 filing fee. The Tenants can deduct \$100.00 from one future 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 *Act*.

Dated: July 16, 2019

---

Residential Tenancy Branch