



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

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

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause, dated May 22, 2019 ("1 Month Notice"), pursuant to section 47.

"Tenant DS" did not attend this hearing, which lasted approximately 43 minutes. The two landlords, "male landlord" and female landlord ("landlord"), tenant RW ("tenant") and tenant RW's legal advocate ("tenant's advocate") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant confirmed that his advocate had permission to speak on his behalf at this hearing. The tenant confirmed that he had permission to represent tenant DS as an agent at this hearing (collectively "tenants"). The two landlords confirmed that they were the property managers for the rental unit and that they had permission to represent the owner company of the rental unit at this hearing (collectively "landlords").

The hearing began at 11:00 a.m. with me and the landlord present. The tenant's advocate called in late at 11:04 a.m. The tenant joined his advocate late at 11:07 a.m. The male landlord joined the landlord late at 11:17 a.m. I informed all parties who joined late, about what occurred in their absence. The hearing ended at 11:43 a.m.

The landlords confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly

served with the tenants' application and the tenants were duly served with the landlords' evidence package.

The tenant confirmed receipt of the landlords' 1 Month Notice on May 22, 2019. The landlord confirmed that the notice was served to the tenants on the above date by way of posting to his rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were duly served with the landlords' 1 Month Notice on May 22, 2019.

### Issues to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an order of possession for cause?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

The tenant confirmed this month-to-month tenancy began around August 2014. The landlords confirmed that they became the property managers in September 2018 but the landlord owner company has always remained the same.

Both parties agreed to the following facts. Monthly rent in the amount of \$600.00 is payable on the first day of each month. A security deposit of \$300.00 was paid by the tenants and the landlords continue to retain this deposit. A written tenancy agreement was signed by the parties from August 15, 2018 for a fixed term of one year. The tenants continue to reside in the rental unit.

Both parties agreed that the landlords issued the 1 Month Notice with an effective date of June 22, 2019, for the following reason:

- *Tenant or a person permitted on the property by the tenant has:*
  - *put the landlord's property at significant risk;*

The landlord testified that on May 21, 2019, she entered the tenants' rental unit and found someone smoking inside. She said that there were painters coming to paint the outside of the rental building, all occupants were given a notice to clean their deck and down below, and she found the person smoking. She stated that the person was sitting but trying to stand, with a lit cigarette in his mouth, and she told him to stop smoking because it was not allowed inside the rental building. She claimed that the tenant has been warned about 50 times to not smoke, including by the former property managers. The male landlord stated that he has seen two ashtrays inside the unit, one for marijuana and the other for cigarettes. The landlords provided photographs of the ashtrays. The landlord maintained that the smoking puts the landlords' property at risk of damaging the carpets and walls, and is also a fire hazard.

The landlord claimed that the tenant also has piles of garbage under the stairs of the rental building, which blocks the exit in an evacuation and is a fire hazard. The landlords provided photographs of the garbage. The male landlord stated that the tenant complied "momentarily" with the landlords' warning to clean up but the garbage always rebuilds. He said that he has seen shopping carts, empty cans, and a mattress in the garbage pile, not the auto parts claimed by the tenant.

Both parties agreed that they attended a previous Residential Tenancy Branch hearing, after which a decision was issued by a different Arbitrator. Neither party provided a copy of the decision for this hearing. The tenant's advocate provided a file number for the hearing, which appears on the front page of this decision. The hearing occurred on March 29, 2019 and the decision was issued on the same date. That decision stated that the tenant's application to cancel a 1 Month Notice was not required because both parties agreed that no 1 Month Notice was issued by the landlords, only a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") was issued.

The landlord claimed that a 1 Month Notice was issued for the tenant blowing smoke in her face and that was the reason for the previous hearing. She said that no decision was made at the previous hearing because two different notices to end tenancy were issued, so the Arbitrator did not deal with the 1 Month Notice. She said that a 10 Day Notice was also issued to the tenant for unpaid rent.

The landlord confirmed that she did not have any complaints against tenant DS. She said that the 1 Month Notice was issued against both tenants because they live together in the same unit. She said her complaints are against the tenant.

The tenants dispute the landlords' claims and the 1 Month Notice. The tenant said that he has complied with the landlords' requests regarding garbage clean up and he does not smoke inside the rental unit. The tenant claimed that when given 24 hours' notice to clean up by the landlords, he cleaned his garbage at the rental unit. He said that he does not leave his garbage outside at the building exit. He maintained that there is an auto store nearby that dumps their garbage and empty oil containers at the exit, so it was not his garbage that the landlords were complaining about.

The tenant testified that neither he, nor tenant DS, smoke inside the rental unit. He stated that he smokes marijuana outside the unit, not inside. He said that he keeps his ashtray inside the unit. He claimed that when the landlord walked in on his friend on May 21, 2019, his friend was not smoking. The tenant claimed that he was in the bedroom of the rental unit when this happened and when he came outside his friend told him that the landlord was there. The tenant said that his friend had a cigarette in his mouth but it was not lit, and he was trying to stand up from the couch to go outside and smoke. He confirmed that his friend has a hip problem and was using crutches so it took him awhile to go outside. The landlord said that she was outside with the painters for some time and she did not see the tenant's friend go outside and smoke. The tenant maintained that there was no non-smoking clause in his tenancy agreement or any addendum. He said that he never had any problems with the former property managers of the building, nor was he issued any 1 Month Notices by them.

### Analysis

In accordance with section 47(4) of the *Act*, the tenants must file their application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenants received the 1 Month Notice on May 22, 2019 and filed their application to dispute it on May 31, 2019. Accordingly, I find that the tenants' application was filed within the ten day limit under the *Act*. Where tenants apply to dispute a 1 Month Notice within the time limit, the onus is on the landlords to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

I find that the landlords did not issue the 1 Month Notice for a valid reason. I find that the landlords did not show that the tenants put the landlords' property at significant risk. The landlord did not provide documentary evidence in the form of a tenancy agreement, an addendum or another document indicating that the tenants cannot smoke in the rental unit. The tenant denied smoking in the rental unit, confirming that he smokes outside. The tenant was present with his friend on May 21, 2019 and confirmed that his

friend was not smoking but was attempting to go outside and smoke. The tenant cleaned up the garbage as per the landlords' notice.

I do not find the above one incident of alleged smoking on May 21, 2019, or the garbage issue which I find was resolved, to be a pattern of behaviour showing "significant" risk to the landlords' property. The landlord did not provide details of the other "50 times" she said the tenant was warned about smoking or how this behaviour caused the landlords' property to be at significant risk.

Accordingly, I allow the tenants' application to cancel the landlords' 1 Month Notice. The landlords are not entitled to an order of possession.

### Conclusion

The tenants' application to cancel the landlords' 1 Month Notice is allowed.

The landlords' 1 Month Notice, dated May 22, 2019, is cancelled and of no force or effect.

The landlords are not entitled to an order of possession.

This tenancy continues until it is 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: July 16, 2019

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Residential Tenancy Branch