



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT, LRE

### Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on July 8, 2019, wherein the Tenants requested an Order canceling a 1 Month Notice to End Tenancy for Cause issued on July 28, 2019 (the "Notice"), an Order restricting the Landlord's right to enter the rental unit and to recover the filing fee.

The hearing was conducted by teleconference at 11:00 a.m. on August 26, 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

### Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlord's right to enter the rental unit be restricted?
3. Should the Tenants recover the filing fee?

### Background and Evidence

*Residential Tenancy Branch Rules of Procedure—Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenants applied for dispute resolution and are the Applicants, the Landlord presented their evidence first.

The Tenants provided a copy of the residential tenancy agreement in evidence which provided that the tenancy began August 1, 2017 and monthly rent when the tenancy began was \$800.00. The Landlord testified that the Tenants always paid their rent on time.

The Tenants also provided a copy of the Notice in evidence. The reasons cited on the Notice were “that the Tenants or a person permitted on the residential property by the Tenants has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property”. In the “Details of Cause” section on the Notice the Landlord wrote that on May 5, 2019 the Tenant, A.O., pushed the Landlord.

Documentary evidence submitted by the Tenants indicates they disputed the Landlords version of events on May 5, 2019. The Tenants submit that the Landlord entered the rental unit without their consent late at night, and was aggressive, yelling and threatening. The Tenants also alleged the Landlord enters the rental unit without proper notice.

In response, the Landlord stated that he never goes to the rental unit by himself. He also claimed that he always gave written notice, yet when I asked if he provided copies of these notices in evidence, he stated that he only goes in when invited. As an example, he claimed that the Tenants invited him to come into the rental unit on February 2, 2019 due to a water leak.

The Landlord also claimed that on May 5, 2019, he came to the rental unit because the Tenants invited him as they asked him to repair a door. He stated that the reason the gap existed is because the carpet was removed and laminate flooring put in at the Tenants' request. He further stated that earlier in the day the Tenants went to the park and when they got back at approximately 9:00 p.m., he went to the rental unit. When he got to the rental unit he talked to them and told them he needed to take the door off, fix it, and put it back on. He claimed that on this occasion, he had a piece of wood in his hand and he showed the male Tenant, A.O. what he intended to do with the wood. He said that A.O. said he would do the repair and as such, the Landlord claimed that he gave the wood to A.O. The Landlord said that after this A.O. pushed him. He confirmed that he called the police at this time.

The Landlord stated that the female Tenant, S.P., is nice, but he is afraid of A.O. He claimed that after he issued the Notice, A.O. passed him with the stroller and then pushed the stroller really hard against the door frame and broke a piece of the door frame off (which he said was the size of a loonie). Additionally, the Landlord claimed that A.O. has threatened him with a shopping cart.

The Landlord said he has managed the building for 30 years and he never has to evict tenants; he further claimed that originally he issued a notice which was so old it was dismissed.

In response to the Landlord's testimony, the Tenant S.P. testified as follows. She confirmed that they did not ask the Landlord to come to the rental unit late at night on May 5, 2019. She explained that they had a problem with mice in the building and they asked the Landlord to fix the gap under the door as they have a baby and did not want mice coming into the rental unit through the gap. She stated that they waited three months for the repair to be done. She confirmed that on May 5, 2019, as they were leaving for the park, she reminded the Landlord that it had been three months. He responded that his handyman was not available but that he would try to fix it.

S.P. testified that the Landlord showed up at their rental unit at 11:00 p.m. She stated that he knocked on the door and she opened the door (her husband was in the kitchen at the time doing paperwork). S.P. further stated that the Landlord asked to do the repair at that time and the Tenant informed him that the baby was sleeping and it was not a good time. She stated that he said it would only take 5 minutes and he had a drill with him. She said that she told him that he couldn't, that it was a bad time and he

insisted. S.P. stated that the Landlord had the stick in his hand and was pointing it and raising his voice. S.P.'s husband, A.O., then came to the door because the Landlord was yelling and shouting. S.P. stated that A.O. then grabbed the stick and put it outside the apartment. She said that the Landlord was yelling at this time and was clearly angry because he wanted to do the repair right then and was upset they would not let him.

S.P. stated that Landlord then called the police. When the police attended, they spoke with both Tenants and they explained what happened. She stated that they were advised to go to B.C. Housing and make an application for dispute resolution. S.P. further testified that the constable tried to talk to the Landlord and the Tenants, but the Landlord was so agitated the constable had to walk him back to his unit.

S.P. confirmed that the Landlord issued a 1 Month Notice on May 6, 2019. They applied to dispute the Notice and a hearing occurred on June 14, 2019. At the hearing the Notice was cancelled as the Landlord used an incorrect form. The file number for that matter is included on the unpublished cover page of this my Decision.

In terms of the Tenants' Application for an Order restricting the Landlord's right to enter the rental unit, S.P. stated that the Landlord came into the rental unit twice without proper notice. She stated that first occurred in February 2019 when there was a leak. She confirmed that she allowed him to come in because he was nice at the time. However, when he came in he told her that he was going to remove parts of the floor and the carpet to deal with the leak. She told him that she did not want him to do so as she was worried about mould (as she could both see and smell the mould). She stated that it was also very late at night and he came in with the garbage can and started removing the carpet. She stated that they were worried about their health and as he insisted on doing the work, they left for three days with their children. She confirmed that following this the carpet was removed and laminate flooring was installed. She stated that the issue with the door was not about the flooring; rather it was a problem from the beginning as the mice were getting in under the door.

S.P. stated that the Landlord's allegation that A.O. purposely damaged the door frame with the stroller was false. She claimed that the Landlord leaves items, such as chairs, or a vacuum in the hallway and as the hallway is only 3 feet wide, the items in the hallway impacted their ability to walk past. She noted that on that day, her husband was merely trying to get past these items with the stroller and accidentally hit the door frame. She also denied that her husband threatened the Landlord with a shopping cart.

She claimed that it was the Landlord who was aggressive and stated that the Landlord is always yelling at them.

In reply the Landlord stated that in February 2019 the Tenants invited him in to turn the water leak off on Saturday during the time when the leak occurred. He stated that he then came back with his knife to cut the carpet. Again, he claimed they invited him in, because they opened the door.

In reply to the Tenant's testimony, and in particular their version of the May 5, 2019 incident, the Landlord stated that he never went inside the apartment.

### Analysis

Ending a tenancy is a significant request and must only be done in accordance with the *Residential Tenancy Act*.

A Landlord may end a tenancy for cause pursuant to section 47. In this case, the Landlord issued the Notice pursuant to section 47(1)(d)(i) which reads as follows:

#### **Landlord's notice: cause**

**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

(i) *significantly interfered with or unreasonably disturbed* another occupant or the landlord of the residential property,

*[emphasis added in italics]*

The use of such wording in the legislation is purposeful and reflects the standard of proof required for a landlord to end a tenancy for these reasons.

After consideration of the testimony and evidence before me and on a balance of probabilities, I find the Landlord has failed to meet the burden of proving this tenancy should end for the reasons cited on the Notice. The Landlord provided insufficient evidence that the Tenants *significantly interfered with or unreasonably disturbed* another occupant or the Landlord.

The evidence confirms that there was a disagreement on May 5, 2019. While the parties disagree as to whether the Landlord attended the rental unit at 9:00 p.m. or 11:00 p.m. it is clear the Landlord attended the rental unit in the evening.

I accept S.P.'s testimony that she was concerned about the Landlord doing repairs to the door at such a late hour, particularly as they have a small child. I further accept her testimony that when she tried to tell the Landlord that it wasn't a good time that he became agitated and began yelling at her. During the hearing the Landlord behaved in a similar manner, as he became agitated when asked to keep on track, raised his voice and talked over me when I tried to speak to him; this behaviour suggests to me he is prone to outbursts as described by the Tenant. I further accept the Tenant's testimony that her husband removed the wood from the Landlord and put it outside the rental unit. I also accept her evidence that her husband did not push the Landlord as he alleges. Overall I found her testimony to be consistent and credible. Conversely, I found the Landlord evasive and argumentative, such that where their testimony conflicts I prefer S.P.'s.

I also accept S.P.'s testimony that her husband accidentally hit the door frame in the hallway and that he did not purposely do so. I further accept her testimony that her husband did not threaten the Landlord with a shopping cart.

**For these reasons I find that the Landlord has failed to prove the reasons cited in the Notice. The Notice is cancelled and of no force and effect. The tenancy will continue until ended in accordance with the Act.**

In terms of the Tenants' request for an Order restricting the Landlord's right to enter the rental unit I find as follows.

The evidence before me suggests the Landlord entered the rental unit in February of 2019 as a result of leaking water; the extent of the leak was unclear to me, and I therefore am unable to find this was an emergency. That said, the Tenant confirmed she allowed the Landlord to enter the rental unit.

The Landlord insisted that he has never entered the rental unit without providing proper notice, or being invited in. While it appears the Tenant reminded the Landlord of her request for a repair to the door earlier during the day on May 5, 2019, I find this does not meet the definition of Tenant's permission pursuant to section 29(1)(a). The Tenants allege the Landlord came into the rental unit later that evening; the Landlord

claims he was invited in. In any event, I find the proper course would have been for the Landlord to post a written Notice of his intended entry for the purpose of repairing the door as required by section 29(b).

I find the Tenants have failed to provide sufficient evidence to support a finding that the Landlord's right to enter the rental unit should be restricted more than the restrictions provided in the *Act*. To this end, the parties are reminded of the requirements set forth in section 29 of the *Residential Tenancy Act* which reads as follows:

**Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

As the Tenants have been substantially successful in their application I award them recovery of the \$100.00 filing fee. Pursuant to section 72 of the *Act*, I authorize them to reduce their next month's rent by \$100.00.

Conclusion

The Tenants' Application to cancel the Notice is granted. The tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.

The Tenants' Application for an Order restricting the Landlord's right to enter the rental unit is dismissed.

The Tenants' request for recovery of the filing fee is granted. The Tenants may reduce their next months' rent by \$100.00 to recover this sum.

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: August 28, 2019

---

Residential Tenancy Branch