



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT, and RP

### Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to sections 32 and 62;
- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

### Preliminary Issue: Severance of Portion of Tenant's Application

Residential Tenancy Branch Rules of Procedure, number 2.3 states that:

#### 2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the One Month Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing in order to address the question of the validity of the One Month Notice.

The tenant's other claims are unrelated in that they do not pertain to facts relevant to the grounds for ending this tenancy as set out in the One Month Notice. I exercise my discretion to dismiss all the tenant's claims with leave to reapply except for the cancellation of the One Month Notice and recovery of the filing fee for this application.

Preliminary Issue: Late service of landlord's evidence

The landlord filed evidence with the Residential Tenancy Branch on the day of the hearing. The landlord did not serve the evidence on the tenants.

The *Residential Tenancy Branch Rules of Procedure*, Rule No. 3.15 establishes that evidence intended to be relied on at the hearing must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing. I find that the landlord and the Residential Tenancy Branch was not served in accordance with the *Residential Tenancy Branch Rules of Procedure* stated above.

*Residential Tenancy Branch Rules of Procedure*, Rule No. 3.12 states that evidence that was not served properly may be excluded if the acceptance of the evidence would prejudice the other party or result in a breach of the principles of natural justice. In this matter, I find that the acceptance of the respondent's evidence without being served upon the tenants would prejudice the tenants and breach the principles of natural justice.

Accordingly, I exclude the landlord's evidence which was served on the day of the hearing. This evidence will not be considering in my rendering of this decision.

Issue(s) to be Decided

Are the tenants entitled to cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47?

If not, is the landlord entitled to an order of possession pursuant to section 55?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72?

### Background and Evidence

The tenancy started in March 2018. The monthly rent was initially \$1,050.00 and it later increased to \$1,100.00. The tenants paid a \$525.00 security deposit.

The tenancy agreement states on first page that rent is due "...on, or before the 1<sup>st</sup> day of each month." However, the tenancy agreement states on the second page that rent is to be paid "...prior to 1<sup>st</sup> of each month."

The landlord testified that the tenants were using the shared laundry at all times of the night which disturbed other occupants of the property. The landlord also claimed that the tenants left clothes in the laundry machines for prolonged periods of time. The tenants denied these allegations.

The landlord has barred the tenants' access to the laundry room since April 2018. The tenants have not been able to use the laundry room since then.

The landlord complained that the tenants were loud and they frequently disturbed other occupants. The landlord complained that the tenants had frequent loud guests late at night.

The tenants denied these allegations. They testified that the property was very old with very poor soundproofing so regular household noise travelled through the house. The tenants also testified that the neighbourhood is very noisy and many of the sounds that the landlord was complaining about were actually from outside.

The landlord also complained that the tenants were frequently late paying rent. The landlord argued that rent was due on the last day of each preceding month.

The landlord provided the following rent payment history:

<u>Rental period</u>	<u>Date rent paid</u>
June 2019	June 2, 2019
May 2019	May 1, 2019
April 2019	April 2, 2019
March 2019	March 2, 2019
February 2019	February 1, 2019
December 2018	December 1, 2018
November 2018	November 2, 2018

The tenants argued that the rent was due on the first day of each month. The tenants testified that they timely paid the rent by the 1<sup>st</sup> of each month except for September 2018 which they paid on September 2, 2018.

The landlord testified that the rent payments were problematic because he had to travel long distances each month to pick up the cash rent payments. The landlord admitted that he did not give the tenants receipts for their rent payments.

The landlord served the One Month Notice on June 30, 2019. The One Month Notice had a stated move out date of July 31, 2019. The landlord checked the following as grounds for the One Month Notice:

- The tenant is repeatedly late paying rent.
- The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed 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 the other occupant.

### Analysis

The landlord's One Month Notice claimed the following basis for ending the tenancy for cause: (i) the tenants disturbed other occupants doing laundry; (ii) the tenants disturbed other occupants by making excessive noise; and (iii) the tenants were repeatedly late paying rent.

I will analyze each of these grounds for ending the tenancy separately.

(i) *Laundry*

The parties both testified that the tenants have not have access to the laundry room since April 2018. I find that complaints about the tenants' use of the laundry room from March and April 2018 occurred too long ago to be the basis of a notice to end tenancy more than a year later in June 2019. Accordingly, I do not uphold the landlord's One Month Notice on the basis of the tenants' use of the laundry room.

(ii) *Excess noise*

I find that the landlord has failed to provide sufficient evidence to establish that the tenants have unreasonably disturbed other occupants. Pursuant to *Rules* 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that the notice to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct.

I find that the landlord has not satisfied this burden of proof. The landlord did not provide any witnesses or witness statements to substantiate his noise complaints.

Accordingly, I do not uphold the landlord's application to end this tenancy for excessive noise.

(iii) *Late payment of rent*

The tenancy agreement states that rent is payable on the first day of each month on page one and it states that the rent is payable on the last day of the preceding month on page two. These terms in the tenancy agreement is inconsistent. I find that, because of this inconsistency, the monthly rent is due on the later deadline stated in the tenancy agreement, being the first day of each month.

The landlord testified that the tenant paid the monthly rent after the first day of each month in June, April, March and November in 2018 whereas the tenants testified that they only paid rent late in September 2018. In the absence of corroborating receipts, I find that the landlord has not established that the tenants were late paying the rent more than the single incident in September 2018. And, I find that a single late payment of rent is not sufficient grounds to be granted an order of possession for repeated late payment of rent.

I find that the landlord has not provided sufficient evidence to satisfy the burden of proving that the tenants were repeatedly late paying their rent. Accordingly, I do not uphold the landlord's application to end this tenancy for repeated late payment of rent.

Based on the foregoing, the tenant's application to cancel the landlord's one Month Notice is granted. The One Month Notice is cancelled and is of no force or effect. This tenancy shall continue until it ends pursuant to the *Act*.

Since the tenants have prevailed in this matter, the tenants' application for reimbursement of the filing fee is granted pursuant to section 72. The tenants may deduct may deduct \$100.00 from **ONE** future rent payment to recover the filing fee.

### Conclusion

The tenant's application to cancel the landlord's one Month Notice is granted. The One Month Notice is cancelled and is of no force or effect. This tenancy shall continue until it ends pursuant to the *Act*.

The tenants' application for reimbursement of the filing fee is granted pursuant to section 72. The tenants may deduct may deduct \$100.00 from **ONE** future rent payment to recover the filing fee.

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: September 3, 2019

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Residential Tenancy Branch