



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, OLC, FFT

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As Tenant CO (the tenant) who advised that they had full authority to represent the interests of the co-tenant Tenant LB in this matter confirmed that they received the landlord's 1 Month Notice sent by the landlord by registered mail on July 18, 2019, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that on July 31, 2019, they received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on July 28, 2019, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any orders be issued with respect to this tenancy? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

On March 18, 2012, the parties signed a one-year fixed term Residential Tenancy Agreement (the Agreement) enabling the tenants to move into the rental unit on March 26, 2012, and remain until April 1, 2013. This tenancy continued on a month-to-month basis after the expiration of the initial term. Monthly rent is currently set at \$1,230.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$600.00 security deposit paid on March 26, 2012. The parties agreed that the landlord has accepted the tenants' payment of \$1,230.00 for use and occupancy for the month of September 2019, and not to reinstate this tenancy.

The landlord's 1 Month Notice seeking an end to this tenancy by August 31, 2019, identified the following reasons for ending this tenancy for cause:

*Tenant has caused extraordinary damage to the unit/site or property/park.*

*Tenant has not done required repairs of damage to the unit/site.*

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding resolution of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on October 31, 2019, by which time the tenants will have surrendered vacant possession of the rental unit to the landlord.

2. The tenants agreed to pay rent for the month of October 2019 when rent for that month becomes due, and the landlord agreed to accept this payment and issue a receipt for use and occupancy only and not to reinstate this tenancy.
3. The tenants agreed to allow the landlord to retain the security deposit for this tenancy.
4. The landlord agreed to not pursue any monetary claim for damage arising out of the elevator incident of June 5, 2018, and any claims made by the strata corporation against the landlord arising out of any costs incurred by the strata corporation arising out of the elevator incident of June 5, 2018 involving the tenants.
5. In the event that the tenants are able to locate alternate accommodations that would be available to them prior to October 31, 2019, the landlord agreed to allow the tenants to provide at least 24 hours notice by email that they will be vacating the rental unit. In that event, the landlord agreed to send the tenants a pro-rated monetary amount to the tenants at the forwarding address the tenants provide to the tenants to reimburse the tenants for that portion of rent paid for the period from the date that the tenants vacate the rental unit until the end of October 31, 2019.
6. The tenants agreed to provide the landlord with their forwarding address at the end of this tenancy.
7. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenants' application and all monetary issues currently in dispute arising out of this tenancy and the June 5, 2018 incident involving the tenants and the elevator and that they did so of their own free will and without any element of force or coercion having been applied.

### Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the tenant does not vacate the rental premises in accordance with their agreement by 1:00 p.m. on October 31, 2019. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with an Order in the event that the tenants do not vacate the premises by the time and date set out in their agreement. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the tenants to pay the landlord \$1,230.00 by October 1, 2019, to enable the tenants to remain in use and occupancy of this rental unit until October 31, 2019. I order the landlord to accept this payment for use and occupancy only and to issue a receipt for this payment to this effect.

To implement this settlement agreement, I order the landlord to refrain from making any monetary claim against the tenants for issues arising out of the elevator incident of June 5, 2018.

To give effect to the settlement reached between the parties and in the event that the tenants are able to locate alternate accommodations that would be available to them prior to October 31, 2019, I allow the tenants to provide at least 24 hours notice to the landlord to end this tenancy prior to October 31, 2019. In that event, I order the landlord to send the tenants a pro-rated monetary amount to the tenants at the forwarding address the tenants provide to the tenants to reimburse the tenants for that portion of rent paid for the period from the date that the tenants vacate the rental unit until the end of October 31, 2019.

To give legal effect to this settlement agreement, I order the landlord to retain the security deposit for this tenancy. I also order the tenants to provide their forwarding address in writing to the landlord at the end of this tenancy.

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 24, 2019

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Residential Tenancy Branch