



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COUNTESS GARDENS INC. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, OPC, FFL;    MT, CNC, CNR

### Introduction

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

- an order of possession for unpaid rent and for cause, pursuant to section 55; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenant's first application pursuant to the *Act* for:

- more time to make an application to cancel the landlords' 1 Month Notice to End Tenancy for Cause, dated June 27, 2019, pursuant to section 66; and
- cancellation of the landlords' 1 Month Notice, pursuant to section 47.

This hearing also dealt with the tenant's second application pursuant to the *Act* for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 21, 2019 ("10 Day Notice"), pursuant to section 46.

The landlords' two agents, the tenant, and the 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. This hearing lasted approximately 69 minutes.

The hearing began at 9:30 a.m. with me and the two landlord agents present. The tenant and her advocate called in late at 9:34 a.m. I informed the tenant and her advocate about what occurred in their absence. The hearing ended at 10:39 a.m.

The landlords' property manager NA ("landlord") and the landlords' building manager AC ("landlord AC"), both confirmed that they had permission to represent the landlord company named in this application and the owner of the rental unit. The tenant confirmed that her advocate had permission to speak on her behalf.

The tenant's advocate confirmed receipt of the landlords' application for dispute resolution hearing package and the landlord confirmed receipt of the tenant's two applications for dispute resolution hearing packages. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlords' application and the landlords were duly served with the tenant's two applications.

The tenant confirmed receipt of the landlords' 1 Month Notice on June 27, 2019 and 10 Day Notice on August 21, 2019. The 1 Month Notice indicates an effective move-out date of July 31, 2019 and the 10 Day Notice indicates an effective move-out date of September 3, 2019. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' 1 Month Notice on June 27, 2019 and 10 Day Notice on August 21, 2019, both by way of posting to her rental unit door. Landlord AC confirmed that the above notices were served on the above dates using the above method. Copies of both notices were provided for this hearing.

#### Issue to be Decided

Should the landlords' 10 Day Notice and 1 Month Notice be cancelled? If not, are the landlords entitled to an order of possession?

Are the landlords entitled to recover the filing fee paid for their application?

#### Background and Evidence

Both parties agreed to the following facts. This tenancy began on May 1, 2009. A written tenancy agreement was signed by both parties. Monthly rent in the amount of \$883.00 is payable on the first day of each month. A security deposit of \$363.00 and a pet damage deposit of \$150.00 were paid by the tenant and the landlords continue to retain both deposits. The tenant continues to reside in the rental unit.

The landlord testified that the tenant was issued a 10 Day Notice for unpaid rent of \$1,024.00 due on August 1, 2019. He said that the tenant failed to pay August 2019 rent of \$883.00 and July 2019 rent of \$141.00. When I asked what payments were made in July 2019 and when they were made, the landlord did not know, claiming he did not have all of his evidence in front of him during the hearing. The landlord was calculating the outstanding rent of \$141.00 during the hearing. He indicated that there was a balance of \$70.00 from the previous month but did not indicate what payments were made. He said that the \$1,024.00 amount included a \$25.00 late fee and a \$25.00

NSF fee and that this was included in rent because the tenant did not pay it. Landlord AC confirmed that she accepted the tenant's rent cheques for August and September 2019, in the amount of \$883.00 each, but did not yet deposit them, as she was waiting for this hearing outcome. She said that she did not issue receipts to the tenant for the rent payments. She stated that rent for October 2019 was still unpaid.

The tenant's advocate stated that the tenant paid for August and September 2019 rent to the landlords. She claimed that the tenant did not have knowledge of any late or NSF fees. She explained that the tenant did not know what the rent of \$1,024.00 included because it had additional fees beyond the rent.

Both parties agreed that the landlords' 1 Month Notice was issued for the following reasons:

- *Tenant or a person permitted on the property by the tenant has:*
  - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
  - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
  - *put the landlord's property at significant risk.*

The landlord testified that the tenant was issued a 1 Month Notice because of the dirty condition of the rental unit. He said that the landlords performed inspections, there has been an ongoing problem for six months when he spoke to the tenant's daughter, and the landlords were afraid for the safety of other occupants and the building. Landlord AC testified that on June 27, 2019, she saw a shopping cart in front of the tenant's rental unit for two hours, it smelled bad, she thought it was body waste but did not want to investigate, she took the items to the garbage, and the tenant told her it was not her fault that the garbage was located so far away. Landlord AC stated that the tenant did not answer her door when a cleaning person came to the front of the building one time. She said that she saw the rental unit two days prior to this hearing, when she went to help the tenant with her stove, and the condition of the unit was still bad and filthy.

The tenant's advocate stated she is the social worker assisting the tenant because she is house-bound. She said that the tenant did not know the procedures for applying to cancel the 1 Month Notice, approached her as soon as she could, and she was not initially available so she helped the tenant to apply as soon as she could. She claimed that the tenant was in the hospital from March 20 to May 14, 2019, so she was not at

the rental unit during this time. She said that the hospital sent pest control to the rental unit on May 7, 2019 and did not find any bed bugs in the unit, as per their report. She explained that the tenant's daughter moved out of the rental unit and left a mess. She confirmed that the tenant cannot clean the rental unit on her own but the tenant's advocate is arranging for cleaning services on behalf of the tenant. She claimed that the tenant has removed clutter, donated items, and cleaned up her unit to the point where the tenant's advocate feels comfortable going inside the unit, despite the fact that she is pregnant. She stated that the shopping cart referenced by the landlords on June 27, 2019, was left out by the tenant's home support workers, as they were helping the tenant with self-care, cleaning her unit, and taking out the garbage.

### Analysis

#### 10 Day Notice

In accordance with section 46(4) of the *Act*, the tenant must file her application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant received the 10 Day Notice on August 21, 2019 and filed her application to dispute it on August 26, 2019. Accordingly, I find that the tenant's application was filed within the five-day time limit under the *Act*.

Section 46(1) of the *Act* allows the landlords to issue a 10 Day Notice only after rent is unpaid and section 52(d) of the *Act* requires the landlords to state on a notice to end tenancy, the reason for issuing the notice. The landlords indicated that \$1,024.00 in rent was due on August 1, 2019, but included \$50.00 in late and NSF fees, when they are not rent amounts.

The landlord also did not know why the notice was for \$1,024.00 and was calculating this amount during the hearing, stating that \$141.00 was from July 2019 rent, but was unable to provide a breakdown as to when and what payments were made in July 2019. As such, I find that the tenant did not have proper notice of the exact amount of rent due on August 1, 2019. The tenant paid the rent amount of \$883.00 for each of August and September 2019 to the landlords, as required by her tenancy agreement.

The landlords accepted the tenant's August and September 2019 rent cheques, even though they did not cash it, after the effective date of September 3, 2019. The landlords did not issue receipts for "use and occupancy only," to tell the tenant that the tenancy was not reinstated. Accordingly, I find that the landlords' 10 Day Notice, dated August

21, 2019, is cancelled and of no force or effect. The landlords are not entitled to an order of possession.

### 1 Month Notice

In accordance with section 47(4) of the *Act*, the tenant must file her application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month Notice on June 27, 2019 and filed her application to dispute it on July 31, 2019. Accordingly, I find that the tenant's application was not filed within the ten-day time limit under the *Act*.

Section 47(1)(d) of the *Act* allows the landlords to issue a 1 Month Notice only if one of the three reasons apply. I find that the landlords did not issue the 1 Month Notice for valid reasons. I find that the one incident of leaving the shopping cart outside the rental unit on June 27, 2019, does not demonstrate a pattern of behaviour with the tenant. The tenant's advocate confirmed that the tenant's housekeeping service left a shopping cart outside the tenant's rental unit after cleaning it, so the landlord disposed of the garbage. The landlord stated that cleanliness has been a problem for six months but did not provide sufficient proof of same. He said that he spoke to the tenant's daughter verbally. Yet, the tenant's daughter moved out of the rental unit.

The landlord did not reference any written warnings provided to the tenant. Further, the 1 Month Notice was issued on June 27, 2019, only after the shopping cart incident. The tenant's advocate said that she attended at the rental unit, does not have concerns, and is arranging for cleaning assistance for the tenant, who has difficulty cleaning on her own. The landlords did not provide witness statements or letters from other occupants, who they said was affected by the smell in the rental building. I find that this incident and issue of cleanliness does not qualify as significant interference, unreasonable disturbance, serious jeopardy, or putting the landlords' property at significant risk.

Therefore, I find that the tenant does not require an extension of time to cancel the 1 Month Notice because the notice was invalid from the outset. The tenant did not apply past the effective date of September 3, 2019 in the 1 Month Notice. The landlords' 1 Month Notice, dated June 27, 2019, is cancelled and of no force or effect. The landlords are not entitled to an order of possession.

This tenancy will continue until it is ended in accordance with the *Act*.

As the landlords were unsuccessful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

The landlords' entire application is dismissed without leave to reapply.

I allow the tenant's application to cancel the landlords' 10 Day Notice and 1 Month Notice. The landlords' 10 Day Notice, dated August 21, 2019 and 1 Month Notice, dated June 27, 2019, are 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: October 03, 2019

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Residential Tenancy Branch