



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding UNIMATDIX ENTERPRIZE LTD and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

CNC FFT OLC

### Rescheduling of this Hearing

I note that this hearing was originally scheduled for October 3, 2019, however due to technical issues, the hearing was unable to proceed. The Residential Tenancy Branch contacted the parties to inform them of the rescheduled date and time for the hearing.

### Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*; and
- an Order for the landlord to comply with the *Act*, regulation, and/or tenancy agreement pursuant to section 62 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's agent E.B. attended on behalf of the corporate landlord and is herein referred to as "the landlord". The tenants attended with an advocate.

As both parties were present, service of documents was confirmed. The tenants testified that they served the landlord with the Notice of Dispute Resolution Proceeding package for this hearing by Canada Post registered mail on August 30, 2019 to the landlord's address for service provided on the One Month Notice and provided a registered mail tracking number in support of their testimony. The landlord disputed receipt. During the hearing, I accessed the Canada Post website to determine that the tenants' package was unable to be delivered due to an "incomplete" address. As the

tenants testified that they served it to the address provided by the landlord on the One Month Notice, and the landlord confirmed this to be the correct address, I find that the tenants served the Notice of Dispute Resolution Proceeding in accordance with section 89 of the *Act*.

The landlord testified that since he had not received the tenants' Notice of Dispute Resolution Proceeding, he did not find out about the hearing until October 3, 2019, when he was contacted by the Residential Tenancy Branch to reschedule the original hearing date. He further testified that he had been dealing with a death of a friend and therefore had not found an opportunity to serve his evidence on the tenants until October 16, 2019, the day before the hearing, by email. In addition, the landlord provided his evidence to the Residential Tenancy Branch on the same date. The tenants testified that due to this late service of evidence, they had not been provided with sufficient time to review the landlord's evidence.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure sets out the requirements for respondent's service of evidence, as follows, in part:

*The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.*

Accordingly, as I find that the landlord's late service of evidence does not meet the time limits set out under the Rules of Procedure, and further, because service by email is not an acceptable method of service under section 88 of the *Act*, I find that the landlord's documentary evidence will not be considered in this matter, however the landlord was at liberty to provide his verbal testimony pertaining to the evidence at the hearing.

#### Preliminary Issue – Amendment to Tenant's Application

At the outset of the hearing, the landlord confirmed that the corporate landlord's name was incorrectly spelled on the tenants' Application. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the tenants' Application to correct the spelling of the corporate landlord's name.

### Procedural Matters

I explained to the parties that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

### Issue(s) to be Decided

Should the landlord's One Month Notice to End Tenancy for Cause be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the Notice to End Tenancy?

Is the tenant entitled to recover the cost of the filing fee from the landlord?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

No written tenancy agreement was submitted into documentary evidence. The parties confirmed the following terms of the tenancy agreement:

- This tenancy began on July 1, 2017 as a month-to-month tenancy.
- Monthly rent of \$750.00 is payable on the first of the month.
- The tenants did not pay any security or pet damage deposits at the beginning of the tenancy.

The tenants' rental unit is an apartment located on the upper level of the rental property, with commercial units located on the ground level.

The tenants confirmed that the landlord personally served them with the One Month Notice dated August 19, 2019 on that same day. The tenants filed an Application for Dispute Resolution to dispute the notice the same day.

The tenants submitted a copy of the landlord's One Month Notice into evidence, which states an effective move-out date of October 1, 2019, with the following boxes checked off as the reasons for seeking an end to this tenancy:

*Tenant or a person permitted on the property by the tenant has:*

- *put the landlord's property at significant risk.*

*Tenant has engaged in illegal activity that has, or is likely to:*

- *damage the landlord's property.*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

*Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.*

I note that the landlord has not provided any of the particulars or details regarding these reasons to end tenancy in the "Details of Cause" section provided on the form. I confirmed with the landlord that no separate sheet setting out the details regarding the reasons for ending the tenancy was given to the tenants.

I also note that the only documentary evidence submitted by the landlord in this matter was provided to the tenants a day before the hearing, and which has not been considered in this matter as the evidence was not served in accordance with the Rules of Procedure and section 88 of the Act.

The landlord testified that the tenants' use of the building's roof has caused damage requiring the replacement of the roof, that Tenant D.D. was in a verbal altercation with a customer of one of the commercial rental units, that the tenants' dogs leave hair in the stairwell, and that Tenant D.D. is "aggressive" to deal with.

The tenants denied that they have caused damage to the roof and testified that it was an old roof requiring repair. Both parties confirmed that the landlord had now repaired the roof and removed the sliding door which provided the tenants access to the roof and replaced it with a window, so they can no longer access the roof.

Tenant D.D. testified that he wanted to apologize to the customer whom he engaged in a verbal altercation over a parking space.

The tenants testified that other residents have dogs and it is the fur of those dogs that has been left behind in the stairwell.

### Analysis

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

The tenants acknowledged receipt of the landlord's One Month Notice on August 19, 2019. The tenants filed an application to dispute the notice on August 19, 2019, which is within ten days of receipt of the notice. Therefore, I find that the tenants have applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

The approved form for a one month notice to end tenancy for cause includes a section entitled "Details of Cause" and indicates that the notice may be cancelled if details are not described. The landlord issuing the One Month Notice is required to provide the details pertaining to the reasons for ending the tenancy, to ensure that the tenant is clearly aware of the case being made against them, so that the tenant has a full and fair opportunity to prepare their evidence in order to dispute those claims, should they wish to.

In this matter, the landlord failed to provide any particulars regarding the "details of cause" for issuing the notice, on or attached to the notice.

Further to this, the landlord failed to provide any documentary evidence to the tenants in until the day before the hearing in relation to the reasons provided on the notice for ending the tenancy. Therefore, I find that the tenants had no ability to prepare in advance to defend against the allegations of illegal activity, putting the landlord's property at risk and causing extraordinary damage as cited in the One Month Notice, and I find that this has unfairly prejudiced the tenants in their ability to respond to the notice. In his verbal testimony, the landlord did not explain any grounds pertaining to "illegal" activity by the tenants, nor was the landlord able to provide the age of the roof, in order to dispute the tenants' claims that the roof was old and in need of repair due to age.

Therefore, based on the testimony presented, on a balance of probabilities, I find that the landlord failed to provide the required details of cause on the One Month Notice, and I find that the landlord failed to provide sufficient evidence to prove that the tenants are involved in illegal activity or caused extraordinary damage. In addition, I find that the grounds for ending the tenancy based on putting the landlord's property at risk has been addressed as the tenants no longer have access to the roof.

As such, I find that the landlord has failed to satisfy the burden of proving the grounds for ending the tenancy for cause. The One Month Notice is cancelled and of no force or effect.

Therefore, the tenancy will continue until ended in accordance with the *Act*.

I find that the tenants' claim for an order for the landlord to comply with the *Act* was duplicative to their primary application to dispute the One Month Notice and as such I find that this has been addressed through the cancellation of the One Month Notice.

As the tenants were successful in their Application, they are entitled to recover the cost of the filing fee from the landlord. I order that the tenants may deduct \$100.00 from rent on one (1) occasion in full satisfaction of their entitlement to recover the filing fee.

### Conclusion

The tenants were successful in their application to dispute the landlord's One Month Notice. I order that the One Month Notice to End Tenancy for Cause is cancelled and of no force or effect, and this tenancy shall continue until it is ended in accordance with the *Act*.

The tenants may deduct \$100.00 from rent on one occasion in full satisfaction of their entitlement to recover the cost of the filing fee from the landlord.

I find that the tenants' claim for an order for the landlord to comply with the *Act* was duplicative to their primary application to dispute the One Month Notice and as such I find that this has been addressed through the cancellation of the One Month Notice.

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 21, 2019

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Residential Tenancy Branch