



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, LRE

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on December 5, 2019 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a one month notice for cause; and
- an order to restrict or suspend the Landlord's right to enter the rental unit.

The Landlord, the Tenants, and the Tenant's Advocate M.B. attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenants testified that they served the Application and documentary evidence package to the Landlord by registered mail on December 6, 2019. The Landlord confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. During the hearing, the Landlord confirmed that she did not provide any documentary evidence in preparation for the hearing.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note 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 Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling the One Month Notice dated November 26, 2019, pursuant to Section 47 of the *Act*?
2. If the Tenants are unsuccessful in cancelling the One Month Notice is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
3. Are the Tenants entitled to an order to restrict or suspend the Landlord's right to enter the rental unit, pursuant to Section 70 of the *Act*?

Background and Evidence

The parties testified that the tenancy began approximately 7 years ago and that there is no written tenancy agreement between the parties. Currently, the Tenants are required to pay rent in the amount of \$950.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$475.00, which the Landlord continues to hold.

The Landlord stated that she is seeking to end the tenancy in relation to the Tenants paying their rent late in the past, but also as recent as October 2019, December 2019 and January 2020. The Landlord stated that she is also seeking to end the tenancy in relation to several noise complaints and police attendance to the rental unit. The Landlord stated that she has received several text messages from neighbouring occupants who stated that the Tenants argue and that their dog barks frequently.

For the above-mentioned reasons, the Landlord stated that she served the Tenants in person with the One Month Notice on November 26, 2019 with an effective vacancy date of December 30, 2019. The Landlord's reasons for ending the tenancy on the One Month Notice are;

*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.*

In response, the Tenants confirmed having received the One Month Notice on November 26, 2019. The Tenants stated that they have not paid their rent late in the past and that it wasn't until they received the Notice to End Tenancy that they have been unsure as to their responsibilities around paying rent.

The Tenants also stated that the address listed on the One Month Notice is not their address. During the hearing the parties agreed that the Landlord made a mistake on the One Month Notice as she misprinted the dispute address.

The Tenants further denied making noise and stated that the Police have only attended their rental unit on one occasion for an unrelated incident. The Tenants stated that they have not yet received any warning or caution letters from the Landlord and that they are uncertain as to why the Landlord is seeking to end their tenancy.

The Tenants are also claiming for an order that restricts or suspends the Landlords right to enter the rental unit as the Landlord has entered the rental unit without notice. The Landlord responded by stating that she always attempts to communicate her intent to enter the rental unit with the Tenants, however, they are difficult to get a hold of by phone. The Landlord denied entering the rental unit without permission.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a Landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

I note that Section 55 of the Act states that in order for a Landlord to be granted an order of possession, the Landlord's notice to end tenancy must comply with Section 52 of the Act relating to form and content.

Section 52 of the Act States; In order to be effective, a notice to end a tenancy must be in writing and must;

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,***
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
- (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
- (e) when given by a landlord, be in the approved form.*

In this case, I accept that during the hearing, the parties agreed that the Landlord made an error on the One Month Notice by giving the wrong address to the rental unit. In light

of the above, I cancel the One Month Notice, dated November 26, 2019. I order the tenancy to continue until ended in accordance with the Act.

During the hearing, it was mentioned that the Tenant's have recently paid rent late on several occasions. I would like to highlight Section 26 of the Act which states;

Section 26 of the Act explains that the Tenant must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this Act, the Regulations or the Tenancy Agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

The Tenants are cautioned that failure to pay rent to the Landlord in full when it is due could result in the Landlord serving a Notice to End Tenancy for Unpaid Rent. Furthermore, repeated late payments of rent could give the Landlord sufficient cause to end the tenancy.

In relation to the Tenant's Application to restrict or suspend the Landlord's to enter the rental unit, I find that the Tenants have provided insufficient evidence to demonstrate that the Landlord has entered the rental unit without permission. As such, their claim is dismissed.

Regardless, I would like to highlight The Residential Tenancy Branch Police Guideline 7 which offers some useful information which is applicable to both parties in this situation;

A landlord must not enter a rental unit in respect of which the tenant has a right to possession unless one of the following applies:

- an emergency exists and the entry is necessary to protect life or property,
- the tenant gives permission at the time of entry, or
- the tenant gives permission not more than 30 days before the time of entry,
- the landlord gives the tenant written notice not less than 24 hours, and not more than 30 days before the time of entry.
- 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,
- the tenant has abandoned the rental unit, or
- the landlord has an arbitrator's order authorizing the entry.

Regarding written notices, the notice must state a reasonable purpose for the entry and must give the date and time intended for the entry. The time stated must be between 8:00 a.m. and 9:00 p.m. Notices must also be served in accordance with the Act.

Where a valid notice has been given by the landlord it is not required that the tenant be present at the time of entry.

Where a notice is given that meets the time constraints of the Act, but entry is not for a reasonable purpose, the tenant may deny the landlord access. A "reasonable purpose" may include:

- inspecting the premises for damage,
- carrying out repairs to the premises,
- showing the premises to prospective tenants, or
- showing the premises to prospective purchasers.

### Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated November 26, 2019 is cancelled. The tenancy will continue until 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: January 28, 2020

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Residential Tenancy Branch