



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, PSF, LRE, OLC, FFT

### Introduction

The tenants filed two applications for dispute resolution to the *Residential Tenancy Act* (the *Act*). The first application was filed on October 5, 2019 and is for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The second application was filed on October 14, 2019 and is for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing originally convened on December 6, 2019 and the tenants did not attend. A Decision dated December 9, 2019 was issued and an Order of Possession was awarded to the landlord. The tenants' applied for Review Consideration which was granted in a Review Consideration Decision dated December 30, 2019. This is a Review Hearing.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Tenant Ja.J.'s social worker also attended and supported tenant Ja.J. throughout the hearing.

Both parties agree that the landlord was personally served with the Review Consideration Decision and Notice of Hearing in person on January 12, 2020. I find that the landlord was served with the above documents in accordance with the *Act*.

Both parties agree that the landlord was personally served with the applications for dispute resolution. The tenants testified that the documents were served on October 30, 2019. The landlord testified that she could not recall the date. I find that the landlord was served with the tenants' applications for dispute resolution in accordance with section 89 of the *Act*.

#### Preliminary Issue- Amendment

The Tenants applications' do not provide the full name of the respondent / landlord. Pursuant to section 64 of the *Act*, I amend the application to provide the correct name of the landlord's agent who attended the hearing.

#### Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution 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 to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to any of the tenants' other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenants' other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the One Month Notice. I exercise my discretion to dismiss all of the tenants' claims with leave to reapply except cancellation of the notice to end tenancy and recovery of the filing fee for this application.

### Issues to be Decided

1. Are the tenants entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. Monthly rent in the amount of \$750.00 is payable on the first day of each month. Tenant Ja.J. moved into the subject rental property August 1, 2001. Tenant Ja.J. is the only tenant listed as a tenant in section one of the tenancy agreement entered into evidence. In May of 2009 Jo.J., tenant Ja.J.'s adult son, moved into the subject rental property. The subject rental property is a bachelor's suite. On the bottom of the first page of the tenancy agreement there is a notation that states Jo.J. moved in on 30<sup>th</sup> of May- 2009 under which Jo.J. signed. The notation is made on the landlord's official copy of the tenancy agreement, not just on the tenant's copy.

The landlord testified that on September 24, 2019 she put a warning letter in the tenants' mail slot stating that the tenants were facing eviction. The tenants testified that they received the warning letter on or around September 26-27, 2019 as the landlord originally gave them a neighbour's warning letter and gave the neighbor their warning letter and it took a few days for the neighbors to exchange the letters. The September 24, 2019 warning letter was not entered into evidence.

The landlord testified that on September 30, 2019 she put a One Month Notice to End Tenancy for Cause with an effective date of October 31, 2019 (the "One Month Notice") in the tenants' mail slot. The tenants confirmed receipt of the One Month Notice on September 30, 2019. The One Month Notice was entered into evidence.

The One Month Notice stated the following reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site.
- Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;

The landlord testified that the subject rental property is a bachelor suite and it's the current management's position that only one person should live in a bachelor suite. Both parties agree that the subject rental property was under different management when Jo.J. moved in. The landlord testified that Jo.J. is not a tenant and that tenant Ja.J. has allowed an unreasonable number of occupants in the unit.

Jo.J. testified that management approved his moving in with his mother in 2009 when his name was added to the bottom of the tenancy agreement and the change in management should not affect his tenancy.

The landlord testified to the following facts. Jo.J. has significantly interfered with or unreasonably disturbed other occupants and herself. Jo.J. might be dealing drugs at the subject rental property as many people have told her that they have seen him waiting in the lobby and at the front of the building, meeting with people and giving them items. No documents were entered into evidence to support the landlord's above testimony other than a written statement from the landlord.

Tenant Jo.J. testified that he does not deal drugs.

The landlord testified that on one occasion she saw Jo.J. come out of a small bathroom in the lobby with another man who looked homeless. After Jo.J. and the other man left the toilet the landlord checked it and it was brown. The landlord testified that she confronted tenant Jo.J. and told him he can't let people in from the street to use the bathroom and that Jo.J. refused to flush the toilet.

The landlord entered into evidence an incident report dated September 3, 2019 which states:

#### DETAILS OF INCIDENT

I was cleaning the floor in front of the trades washroom. Suddenly, the washroom door opened and Jo. J. stepped out with another guy following him. This is the washroom used by our trades only, therefore, no tenants or visitors are supposed to use it.

#### ACTION TAKEN

I brought it to Jo.J.'s attention that it is not appropriate to have two adults in the small washroom together at the same time, and that this was unauthorized usage of the common property. On my comment that the washroom was dirty after him and his friend he said that he doesn't splash the toilet after usage.

The tenant testified that he was speaking with an acquaintance outside the building and that they were going to go to a nearby park to chat but he had to pee, so he and the acquaintance came inside. The bathroom is by the laundry room and the acquaintance followed him into the bathroom because he was in the way of people doing their laundry. Jo.J. felt uncomfortable with this, but he was in and out in a couple seconds and it was not a big deal. The tenant testified that the toilet was not brown and he never refused to flush it.

The landlord testified that a homeless person lived in the storage room at the subject rental property for two years and when she asked him who let him in, he responded that a guy from the same floor the Jo.J. lives on let him in. The landlord testified that she believes that Jo.J. let him in. Jo.J. testified that he did not let the homeless person in.

### Analysis

Section 47(1)(c) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if there are an unreasonable number of occupants in a rental unit.

Prior to the issuance of the One Month Notice, tenant Ja.J. and Jo.J. lived together in the subject rental property for approximately 11 years. This arrangement, as indicated by the tenancy agreement, was known to management.

I find that on a balance of probabilities, the previous management authorized the Jo.J. to move into the subject rental property because they made a notation on the tenancy agreement that he moved in. This notation is on the landlord's original copy, so it was not added by Jo.J.

All tenancy agreements between a landlord and a tenant with respect to a rental unit and residential property are subject to the *Act*, unless specifically exempted. The definition of "tenancy agreement" in section 1 of the *Act* includes tenancy agreements entered into orally, in writing, and by way of implied or express terms. Therefore, the parties are bound by the terms of their oral agreement and written agreement, including any implied or express terms.

In this case it is undisputed that Jo.J. has resided at the subject rental property for 11 years with tenant Ja.J. Given the significant duration of this living arrangement and the notation on the tenancy agreement, I find that on a balance of probabilities, there was at least an implied term of tenancy that Jo.J. is a tenant. I find that Jo.J. is an authorized tenant and has a right to occupy the subject rental property.

The landlord testified that two people living in a bachelor suite constitutes an unreasonable number of occupants; however, the landlord did not lead any evidence as to what specifically made two occupants unreasonable. I find that the landlord has not proved, on a balance of probabilities, that two authorized tenants living in a bachelor suite constitutes an unreasonable number of occupants. I therefore dismiss the landlord's claim to evict the tenants under section 47(1)(c) of the *Act*.

Section 47(1)(d)(i) states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party who bears the burden of proof has not met the burden on a balance of probabilities and the claim fails.

The landlord accused tenant Jo.J. of dealing drugs and allowing a homeless person into the storage room. Tenant Jo.J. testified that he did not deal drugs or let the homeless person into the storage room. The landlord did not enter any documentary evidence or call any witnesses to support her version of events other than her own written

statement. As the landlord bears the burden of proof and the testimony of the parties differs, I find that the landlord has not met the burden of proof and her claim fails.

I find that while the landlord may have been disturbed by the tenant Jo.J.'s use of the common property bathroom with another man, this disturbance does not constitute an unreasonable disturbance or a significant interference and is not a ground for eviction. I am not satisfied that the actions of the tenant justify bringing this tenancy to an end.

In the absence of sufficient information to support the reason for the notice to end tenancy I allow the tenants' application and set aside the landlord's notice to end tenancy dated September 30, 2019. As a result, the tenancy shall continue in accordance with the *Act*.

As the tenants were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from their first application from the landlord, pursuant to section 72 of the *Act*. I find that the tenants are not entitled to recover the \$100.00 filing fee from their second application as they could have filed an amendment which would not have cost anything. The filing of two separate claims was not necessary.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenants are entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

### Conclusion

The One Month Notice is cancelled and of no force or effect. This tenancy will continue in accordance with the *Act*.

Tenant Jo.J. is a tenant.

The tenants are entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

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: March 2, 2020

---

Residential Tenancy Branch