



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFT, CNC, RP**

### 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 that the landlord perform repairs pursuant to section 33; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

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 was represented by their agent (the "landlord").

As both parties were present service was confirmed. The parties each testified that they were in receipt of the materials. Based on the testimonies I find each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to make repairs to the rental property?

Are the tenants entitled to recover their filing fee from the landlord?

### Background and Evidence

The parties agree on the following facts. This periodic tenancy began in 2013. The current monthly rent is \$1,140.00 payable on the 1<sup>st</sup> of each month. The rental unit is a stand-alone structure on property owned by the landlord. The landlord occupies a separate building on the property and operates a commercial orchard. Both parties characterized their relationship as being amicable and good prior to the present dispute which resulted in the issuance of the 1 Month Notice.

The furnace in the rental building was not functioning properly through the winter of 2019. The issue was raised with the landlord and the landlord arranged for repairs to be performed. The landlord submits that to the best of their knowledge the issue has been resolved. The tenants testified that while the furnace is currently working they have been advised by a third party technician they retained that due to the age and condition of the furnace it should be replaced.

There was a confrontation between the parties on January 28, 2020. The parties say that the tenant made angry and hostile remarks about the landlord. The parties agree that this incident was an aberration and that there has never been a pattern of hostile behaviour prior or since that incident. The landlord did not engage in the confrontation and left the scene immediately.

The landlord issued a 1 Month Notice dated January 31, 2020. The reasons provided on the notice for the tenancy to end is that:

- The tenant or a person permitted on the property by the tenant has
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - Put the landlord's property at significant risk
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord explained that prior to the incident of January 28, 2020 the tenants have been in violation by smoking in the rental unit, making unauthorized alterations to the ventilation, electrical and heating systems of the rental unit and parking an excessive number of cars in unauthorized spots on the property.

## Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant, put the landlord's property at significant risk, or that the tenants have breached a material term of the tenancy agreement which was not corrected in a reasonable time after given written notification of the breach.

I find, on a balance of probabilities, that the landlord has not established cause for ending this tenancy. While the undisputed evidence is that there was an incident where the tenant spoke some harsh words at the landlord, I do not find that there is sufficient evidence to conclude that the behaviour of the tenant gives rise to an end of the tenancy.

While it may be unpleasant to have someone speak harsh words at you, based on the testimony of the landlord and the written submissions, I do not find that the interaction can be characterized as an unreasonable disturbance. By all accounts, this was a one time incident that was quickly de-escalated by the landlord walking away.

Residential Tenancy Policy Guideline 8 defines a material term as a term that is so important that the most trivial breach of that term gives the other party the right to end the agreement.

I find that the other complaints about the tenancy by the landlord including the smell of smoke, parking vehicles or work done on the premises gives rise to an end of the tenancy. Much of the landlord's evidence consists of photographs which are not particularly instructive as to why the landlord believes these to be breaches. The landlord's current complaints include trivial matters such as the time when a message was sent or the number of vehicles found on the property. If these issues now raised by the landlord were material terms of the tenancy it is reasonable to expect that the landlord would have taken immediate action or informed the tenant that they were in

breach. I find little evidence that the landlord took issue with the tenant's conduct or modifications to the rental unit until after the 1 Month Notice was issued. Based on the evidence I am unable to find that the issues now raised by the landlord can be construed to be material terms of the tenancy when they were allowed and not objected to for the many years of this tenancy.

I find that the landlord has not met their evidentiary onus that there is cause for this tenancy to end. Accordingly, I allow the tenants' application and dismiss the 1 Month Notice. This tenancy continues until ended in accordance with the Act.

While the tenant seeks repairs to the furnace for the rental property, they gave evidence that it is functioning at this time. While they have mentioned that it does not appear to cycle properly and they have been advised that a new furnace ought to be installed, I find the tenant's testimony to be insufficient to conclude that repairs are required to ensure that the rental unit is suitable for occupation. Consequently, I dismiss this portion of the tenants' application.

As the tenants were partially successful in their application I allow them to recover their filing fee of \$100.00 from the landlord. As this tenancy is continuing I allow the tenants to make a one-time deduction of \$100.00 from their next scheduled rent payment in full satisfaction of this monetary award.

Conclusion

The 1 Month Notice of January 31, 2020 is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The tenants are authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

The balance of the tenants' application is dismissed without leave to reapply.

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 20, 2020

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Residential Tenancy Branch