



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      **CNC OLC FFT / MNDL OPC**

### Introduction

This hearing dealt with two application pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s for:

- an Order of Possession for cause pursuant to section 55;
- a monetary order for damage to the unit in the amount of \$11,102.49 pursuant to section 67.

And the tenants’ for:

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the “**Notice**”) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:12 am in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 am. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that she served each tenant with the notice of dispute resolution proceeding form via registered mail on February 21, 2020. She testified she served each tenant with copies of her documentary evidence on March 6, 2020 by registered

mail. The Canada Post tracking numbers for these mailings are reproduced on the cover of this decision.

I find that the tenants have been served with the required materials in accordance with the Act

### **Preliminary Issue - Severing the Claim**

A portion of the landlord's application is for monetary damage resulting from the tenants allegedly damaging the rental unit flooring. She testified that, as the tenants still have possession of the rental unit, she was unable to gather as much documentary evidence as she would have liked with regards to the damage to the rental unit. She testified that she did not include any claim for other damage to the rental unit (including walls, baseboards, and doors), as she has not had an opportunity to obtain estimates from contractors for these repairs. She testified that she intends to bring a further monetary claim once she has fully assessed the damage to the rental unit.

In light of the facts that the landlord intends to bring a further monetary claim and that she has not had sufficient opportunity to collect as much evidence as she would have liked in support of her current claim, I find that the landlord's monetary claim is premature. Accordingly, and with the consent of the landlord, I dismiss the landlord's application for a monetary order, with leave to reapply.

### **Issues to be Decided**

Is the landlord entitled to an order of possession?

Are the tenants entitled to:

- 1) the cancellation of the order of possession;
- 2) an order for the landlord to comply with the Act; and
- 3) recover their filing fee?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written, month to month tenancy agreement starting March 24, 2018. Monthly rent is \$2,050 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$1,000. The landlord still retains this deposit.

The landlord testified that she conducted an inspection of the rental unit in January 2019 and observed that the flooring throughout the rental unit was significantly damaged. The cork flooring on the main level appeared stained and burned and had numerous gouges and scratches. The landlord testified that the rental unit had a strong odour of urine, especially upstairs, where there was carpet on the floors. She testified that portions of the carpet on the stairs had been removed, and that the bare floorboards were visible. She testified that there were wax stains on the walls and floors

The landlord testified that she told the tenants to repair this damage. She conducted a second inspection in December 2019, and a large portion of the damage remained. She testified that no remediation of the cork flooring was done. She also testified that the garage contained significant amounts of garbage in piles reaching  $\frac{3}{4}$  up the walls.

The landlord testified that she against advised the tenants to repair the damage and clean the garage.

The landlord testified that she returned to the rental unit on January 11, 2020, and the damage was not repaired, and the garage was not cleaned.

The landlord served the tenants with the Notice on January 13, 2020 by leaving it in the tenants' mail box. The grounds to end the tenancy cited in the Notice were:

- 1) the tenant or a person permitted on the property by the tenant has:
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - put the landlord's property at significant risk;
- 2) the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to
  - damage the landlord's property;
- 3) tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;
- 4) tenant has not done required repairs of damage to the unit/site;

The tenants applied to dispute the Notice on January 22, 2020.

The landlord testified that the tenants have not paid monthly rent for March 2020 and that she has served the tenants with a 10 Day Notice to End Tenancy. She testified that when she attended the rental unit to serve the tenants, she noticed that many of the tenants' personal belonging were removed from the rental unit, but some furniture and garbage were still in the rental unit, as was a vehicle of the tenants. The landlord is unsure whether or not the tenants have abandoned the rental unit.

### **Analysis**

The Notice was served on the tenants on January 13, 2020 by leaving it in the tenants' mail box. Pursuant to section 89 and 90, I find that the tenants are deemed served with Notice on January 16, 2020, three days after the landlord placed it in the mailbox.

Section 47(1)(f) of the Act states, "a landlord may end a tenancy by giving a notice to end tenancy if the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property"

Based on my review of the documentary evidence submitted by the landlord and on the landlord's testimony, I find that the tenants have caused extraordinary to the rental unit. The damage to the flooring, base boards, and doors is severe and likely requires extensive repairs to, if not complete replacement of, the damaged items. I accept the landlord's testimony that the entire rental unit smells of urine.

Such damage is significant and beyond what is usual or regular.

Accordingly, I find that the Notice was validly issued on the basis that the tenants caused extraordinary damage to the rental unit, and I dismiss the tenants' application to cancel the Notice. I find that the Notice is valid.

As the tenants have made any submissions relating to their application for an order that the landlord comply with the Act, I dismiss that portion of their application as well.

As such, it is unnecessary for me to consider the other reasons for termination of the tenancy listed on the Notice.

Section 55 of the Act states:

### **Order of possession for the landlord**

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the form of the Notice complies with section 52 of the Act.

As I have dismissed the tenants' application, and I have found that the Notice complies with section 52 of the Act, I find that the landlord is entitled to an order of possession effective two days from the date the landlord serves this order on the tenants.

### Security Deposit

Although I have dismissed with leave to reapply the landlord's application for a monetary order, I find it appropriate to address the issue of the security deposit.

Based on my review of the documentary evidence, I am satisfied that the costs to repair the damage caused by the tenants will far exceed the amount of the security deposit (\$1,000). Accordingly, pursuant to sections 62 and 65 of the Act, I order that the landlord may retain the security deposit in partial satisfaction of the cost of making the repairs. The amount of the security deposit must be deducted from any future monetary order made by an arbitrator of this branch in favour of the landlord against one or more of the tenants.

### Conclusion

The landlord may retain the security deposit.

The tenants must deliver vacant possession of the rental unit to the landlord within two days of being served with this order by the landlord.

*Residential Tenancy (COVID-19) Order, MO M089 (Emergency Program Act)* made March 30, 2020 (the "**Emergency Order**") permits an arbitrator to issue an order of possession if the notice to end tenancy the order of possession is based upon was issued prior to March 30, 2020 (as per section 3(2) of the Emergency Order).

However, per section 4(3) of the Emergency Order, a landlord may not file an order of possession at the Supreme Court of BC unless it was granted pursuant to sections 56 (early end to tenancy) or 56.1 of the Act (tenancy frustrated). The order of possession granted above is not issued pursuant to either section 56 or 56.1 of the Act.

This suspension of enforcement of orders of possession does not relieve the tenant from paying monthly rent. Rent continues to be due and payable in accordance with the tenancy agreement.

Dated: April 2, 2020

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Residential Tenancy Branch