



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      RP, FFT, CNC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause, an order that the landlord make repairs to the rental unit or property, and to recover the filing fee from the landlord for the cost of the application.

The tenants attended the hearing, and one gave affirmed testimony. The landlord and a building manager also attended, and both gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

The parties have also provided evidence, however during the course of the hearing, I determined that the tenants did not serve the landlord with any evidentiary material. Any evidence that a party wishes me to consider must be received by the other party. Since the tenants have not provided any to the landlord, I cannot consider any of the tenants' evidence. All evidence of the landlord has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Have the tenants established that the landlord should be ordered to make repairs to the rental unit or property?

### Background and Evidence

**The landlord's building manager** testified that this fixed-term tenancy began on April 1, 2016 and reverted to a month-to-month tenancy after the first 12 months, and the tenants still reside in the rental unit. Rent in the amount of \$1,279.60 is currently payable on the

1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$587.50 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is an apartment suite in a complex containing 3 floors of rental units. A copy of the tenancy agreement has been provided for this hearing.

The building manager also testified that on June 26, 2020 the landlord posted a One Month Notice to End Tenancy for Cause to the door of the rental unit, which was observed by the building manager. A copy has been provided for this hearing by the landlord, and it is dated June 26, 2020 and contains an effective date of vacancy of July 31, 2020. The reasons for issuing it state:

- 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.

The tenancy agreement contains a clause prohibiting the tenants from having large appliances in the rental unit, other than those provided by the landlord. The tenants used a washer in the apartment causing a leak to the rental unit below in the middle of the night. Photographs of the lower level apartment have been provided for this hearing which show blistering in the ceiling from water damage. There have been previous warnings about doing so, and copies of letters have been provided for this hearing. No permission was given to the tenants to do so, and there is a laundry room for tenants to use which is located on the same floor as this apartment. The tenants have a laundry card which is loaded with approved money by the tenants, as opposed to coin operation, and the building manager is not aware of the tenants ever having to re-load their laundry card.

The maintenance person went to the rental unit the following day and knocked on the door. He spoke to an occupant who said that the washer was used which overflowed in the kitchen sink. The maintenance person did not go inside but saw the portable washer in the hallway inside the rental unit. A statement of the maintenance person has also been provided for this hearing.

**The tenant** testified that there is no washer in the rental unit. A small fridge was placed in the hallway by a nurse of the tenant's sister. The tenant's sister is disabled and cannot walk or talk, and the fridge is used for her medication. The maintenance person ought to have spoken to the tenant's parents. There is an electrical outlet close to the fridge, about 1 meter away. The tenant's sister has been in hospital for the last 3 months so the fridge is not presently being used; the nurses took her medication.

The tenants generally have volunteers do the laundry for the tenant's sister and the rest of the family have laundry done at a neighbour's or in the building.

The tenant further testified that his father dropped some water in the kitchen, and it's an old building.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it.

The landlord does not believe that "dropping water" onto the kitchen floor would cause so much water to leak into the rental unit below. I have to agree.

I have reviewed all of the evidentiary material of the landlord, and specifically the letter of the maintenance person. I am certain that any person who observed an appliance would know the difference between a fridge and a portable washing machine.

I am satisfied that the landlord had cause to issue the notice ending the tenancy, and I dismiss the tenants' application to cancel it.

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the One Month Notice to End Tenancy for Cause provided by the landlord, and I find that it is in the approved form. Therefore, I grant an Order of Possession in favour of the landlord.

The landlord indicated during the hearing that should an Order of Possession be issued, the landlord would be content with an effective date of vacancy of October 31, 2020, and an order that the tenants refrain from using the washing machine in the rental unit. However, the landlord would then be in a position that if the tenants did use the washing machine in the rental unit during the balance of the tenancy, the obligation of the landlord would be to apply for an earlier Order of Possession. Therefore, I grant the Order of Possession effective July 31, 2020 which is the effective date contained in the One Month Notice to End Tenancy for Cause, and I leave it to the landlord to choose when to enforce it.

Since the tenancy is ending, I dismiss the tenants' application for an order that the landlord make repairs to the rental unit or property.

Since the tenants have not been successful with the application, the tenants are not entitled to recover the filing fee from the landlord.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on July 31, 2020.

This order is final and binding and may be enforced.

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: July 27, 2020

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Residential Tenancy Branch