



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the tenants: CNC, OLC, LRE, FF  
For the landlord: OPE, MNR, MNDC, FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (Act).

The tenants applied for:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement;
- an order suspending or setting conditions on the landlord's right to enter the rental unit; and
- recovery of the filing fee.

The landlord applied for:

- an order of possession of the rental unit based upon the end of employment;
- compensation for alleged damage to the rental unit by the tenant;
- a monetary order for unpaid rent;
- compensation for a monetary loss or other money owed; and
- recovery of the filing fee.

The tenants, their advocate, and the landlord attended the hearing, the hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

At the outset of the hearing, the parties confirmed receipt of the other's evidence.

Thereafter the participants were provided the opportunity to present their evidence orally, refer to relevant documentary and digital evidence submitted prior to the hearing, question the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters-

Rule 2.3 of the Rules authorizes me to dismiss unrelated disputes contained in a single application.

In this matter, the tenants and the landlords indicated several matters of dispute on their respective applications, the most urgent of which is the application to cancel the Notice or to enforce the Notice. I find that not all the claims on the applications are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to cancel the Notice, the landlord's request to enforce the Notice and their respective requests to recover the filing fee. The balance of the tenants' application will be dealt with in this Decision and the balance of the landlord's application is dismissed, with leave to re-apply.

#### Issues to be Decided

Has the landlord met the burden of proof to uphold the Notice issued to the tenants?

If so, is the landlord entitled to an order of possession for the rental unit based upon his Notices?

Is either party entitled to recovery of their filing fee?

#### Background and Evidence

The tenants submitted a written tenancy agreement showing a tenancy start date of March 1, 2020, that the tenancy was on a month-to-month basis, monthly rent is \$1,000.00, due on the 31<sup>st</sup> day of the month, and a security deposit and pet damage

deposit of \$500.00, each, being paid by the tenants to the landlord. The written tenancy agreement also indicated that the tenants were to vacate the rental unit, with the stated reason, "Farmhand job may end".

A copy of the Notice was filed into evidence. The Notice was dated June 26, 2020, shows it was attached to the tenants' door on June 27, 2020, and listed an effective move-out date of August 1, 2020.

The Notice explains that the tenants had 10 days to dispute the Notice. It also explains that if the tenant did not file an application to dispute the Notice within 10 days, then the tenant was conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice.

The tenants filed an application to dispute the Notice within the required 10 days.

The causes listed on the Notice were as follows:

- the tenant is repeatedly late paying rent;
- the tenant or a person permitted on the residential property by the tenant has;
  - (i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - (ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - (iii)put the landlord's property at significant risk;
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has;
  - (i)caused or is likely to cause damage to the landlord's property,
  - (ii)adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
  - (iii)jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after the landlord gives written notice to do so;
- the rental unit is provided by the employer to the employee to occupy during the term of employment and employment has ended.

*Landlord's submissions in support of the Notice –*

Pursuant to the Rules, the landlord proceeded first in the hearing to explain and support his Notice.

To support the various causes listed on the Notice, the landlord provided the following testimony.

The landlord submitted that the male tenant was provided use of the rental unit in the course of his employment on the landlord's cranberry farm. The landlord submitted that the tenant has never shown up for work and he has been fired.

The landlord said that for months the tenants have blocked the part of the road used by dump trucks to go to the gravel pit, by putting up cones and vehicles to block the driveway. The landlord submitted that the access was a blind road, putting the vehicles and children on bikes at risk.

The landlord referred to his photographic evidence to show the male tenant holding an ax and pointing a camera in the direction of the road, with a vehicle and trailer showing the road being blocked.

The landlord submitted that he has addressed this issue with the tenants in writing.

The landlord submitted that the tenant and their family have slandered him and his family on social media.

As to the illegal activities, the landlord said that the tenant's sister has driven an illegal all terrain vehicle, he called a quad, on the cranberry farm, explaining it was not properly licensed or insured.

As to the alleged extraordinary damage caused by tenants, the landlord submitted that they have set fires on the property, in a massive fire pit they erected. The landlord submitted that the tenant ripped up the water line from its underwater perch.

As to the breach of a material term, the landlord said that the tenants have prevented him from entering the rental unit and residential property, despite giving proper, 24 hour notices.

The landlord submitted that the tenants have made repeated requests for repairs, yet they have not allowed him onto the residential property or in the rental unit to make such repairs.

The landlord's relevant evidence included communication with the tenants, photographs, and social media posts by the tenants.

*Tenants' response-*

Led by their advocate, the tenant submitted that they have never blocked roads and that the barricade shown in the landlord's photographs was their private driveway. The tenant submitted that they are afraid of the landlord. The tenant said that the dump trucks are still driving on the parallel roads, proving they are not blocked from access to the gravel pit.

The tenants submitted that the landlord began trying to have them evicted due to their requests for repairs and to bring the rental unit to the standard required by the Act.

The tenants submitted when the landlord realized that he could not evict them during the state of emergency, he began intimidating and harassing them. The tenant submitted that the landlord brought an RCMP officer on the evening of April 21 and threatened to kick in the door and remove them and their belongings.

The tenant denied the all terrain vehicle was illegal or that they had set fires on the property. The tenant explained that they have lit only two fires, both in the fire pit.

As to the social media posts, the tenant said that they put information online, as they did not feel safe and in the event anything happened to them, there would be a public record.

The tenants' relevant evidence included communication between the parties and photographs. The communication included many references to the Act and policy during the state of emergency.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In an application to cancel a One Month Notice, the landlord bears the burden of proving at least one of the causes listed on his Notice on a balance of probabilities.

On June 27, 2020, the landlord served the tenants the Notice setting out that it was being given as:

- the tenant is repeatedly late paying rent;
- the tenant or a person permitted on the residential property by the tenant has;
  - (i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - (ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - (iii)put the landlord's property at significant risk;
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has;
  - (i)caused or is likely to cause damage to the landlord's property,
  - (ii)adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
  - (iii)jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after the landlord gives written notice to do so;
- the rental unit is provided by the employer to the employee to occupy during the term of employment and employment has ended.

Subparagraph 47(1)(d)(ii) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

I have reviewed the evidence submissions of both parties and I find both shows the tenants made early and consistent requests to the landlord to make extensive repairs to the rental unit and to remediate the water source.

The landlord's evidence, undisputed by the tenants, showed that tenant TS ripped up the water line from its under water perch.

Although the tenants requested the landlord to make the repairs, her social media posts confirmed that she breached her tenancy agreement two times in the last couple of weeks by not granting the landlord access to the rental unit, even though he gave her 24 hours notice.

Although the tenant defended those actions by citing her health concerns surrounding the ongoing pandemic, the tenant was aware of Covid-19 when she made her requests for emergency repairs. The water line was outside the rental unit and the landlord would not have had to enter the rental unit to address the emergency repair, as defined by section 33 of the Act.

I also have reviewed the photograph showing the tenants' vehicle with a trailer attached parked over what the tenants claimed was their driveway. I find that the tenants have not provided sufficient evidence that this road was their driveway, as it appears to me to be a road. The photograph did not provide the location of the rental unit in relation to the blocked area so that I could assess whether it was in fact their driveway or a road on the landlord's property, as claimed by the landlord.

On balance, I find the tenants blocked the landlord from accessing the residential property, although he has a right to enter the residential property for a lawful purpose.

Given the circumstances, I find that the tenants' conduct was not reasonable.

I therefore find on a balance of probabilities that the tenants have interfered with and jeopardized a lawful right of the landlord to deal with an emergency repair on the water line of the residential property.

I make this determination, with an acknowledgement that during the time in question, the landlord was prevented from entering the rental unit even with proper notice, due to the Ministerial Order, M089 in effect at time. I note that this Order did not prevent a landlord from going onto the residential property.

As I have found that the Notice is valid on the ground that the tenants or person permitted on the residential property by the tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, it is not necessary for me to consider the other causes listed on the Notice.

### **Tenants' application –**

For the above reasons, I dismiss the tenants' application requesting cancellation of the Notice, without leave to reapply, as I find the One Month Notice valid, supported by the evidence, and therefore, enforceable.

Under Section 55(1)(b) of the Act, if a tenants' application to cancel a Notice has been dismissed, I must grant the landlord an order of possession.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective two (2) days after service on the tenants.

In the event that the tenants do not comply with this Order, it may be filed with the Supreme Court and enforced as an Order of that Court.

The **tenants are cautioned** that the costs of such enforcement, **such as bailiff fees**, are subject to recovery from the tenants.

As I have granted the landlord an order of possession of the rental unit pursuant to the One Month Notice, I dismiss the other claims of the tenants, as those requests for orders are in relation to an ongoing tenancy.

### **Landlord's application-**

As I have cancelled the tenants' application and granted the landlord an order of possession of the rental unit based upon his One Month Notice, I find that it was not necessary to consider his application.

In the instance of a tenant applying to dispute a landlord's Notice to end a tenancy, it is not necessary for a landlord to file their own application to enforce the Notice. The reason for this is that if the landlord has submitted sufficient evidence, the Notice will be upheld and they will be granted an order of possession of the rental unit. On the contrary, if the landlord submits insufficient evidence, the Notice will be cancelled.

I do not grant him recovery of his filing fee.



Conclusion

For the reasons stated above, I dismiss the tenants' application, without leave to reapply, as I have upheld the Notice.

For the reasons stated above, I, in effect, grant the landlord's application seeking enforcement of the One Month Notice.

The landlord has been issued an order of possession for the rental unit, effective 2 days after service on the tenants.

The landlord has not been granted recovery of his filing fee.

The portion of the landlord's application dealing with his monetary claim is dismissed, with 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: August 10, 2020

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Residential Tenancy Branch