



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC, CNC, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order that the landlord comply with the *Residential Tenancy Act* or the tenancy agreement; an order cancelling a notice to end the tenancy; and to recover the filing fee from the landlord for the cost of the application.

Both tenants and the landlord attended the hearing, and each gave affirmed testimony. The landlord also called 2 witnesses who gave independent affirmed testimony. The parties were given the opportunity to question each other and the witnesses, and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established that the notice to end the tenancy was given in accordance with the *Residential Tenancy Act*, specifically with respect to the reason for issuing it?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on December 1, 2019 and the tenants still reside in the rental unit. Rent in the amount of \$1,100.00 per month is payable on the 1<sup>st</sup> day of each month, but paid by adjustments from the tenants'

salary; the tenants were managers of the rental complex. The tenants are currently in arrears of rent the sum of \$1,760.00.

A copy of the tenancy agreement has been provided as evidence for this hearing indicating a \$550.00 security deposit and a \$550.00 pet damage deposit, however the landlord testified that the pet damage deposit was never collected. The landlord still holds the security deposit. The rental unit is an apartment in a block containing 18 units, and the landlord does not reside on the property.

On June 27, 2020 the landlord caused the tenants to be served with a One Month Notice to End Tenancy For Cause or End of Employment (the Notice), and a copy has been provided for this hearing. It was served by the landlord's witnesses. The Notice is dated June 27, 2020 and contains an effective date of service of July 31, 2020. The reason for issuing it states: "Tenant's rental unit/site is provided by the employer to the employee to occupy during the time of employment and employment has ended."

The parties had a telephone conversation each day to discuss issues about the rental complex, and one of the tenants stated that she wanted to renovate and install new carpet, but the landlord wanted to discuss it further. Her husband jumped into the conversation and said that it had to be done or they would move out. It was the third time they threatened to do so if the landlord didn't do what they wanted, and the tenant husband said, "I quit."

A new building manager was hired the same day, who also resides in the rental complex.

The landlord feels the tenant is volatile, and the landlord cannot live with him in the building. Numerous text messages have been provided for this hearing to illustrate the volatile behaviour.

The parties had also entered into an employment contract which states that if the employment contract is terminated by either party, the tenants will vacate the rental unit within 2 weeks. A copy has been provided for this hearing. The landlord submits that he soon discovered that the tenant's personality was not suited to being a manager.

**The landlord's first witness** (MR) testified that on June 27, 2020 he went to the apartment block and personally handed a One Month Notice to End Tenancy For Cause or End of Employment to the tenant wife. He was accompanied by 2 other people, one being a security guard.

**The landlord's second witness** (JS) testified that he was present and witnessed delivery of a package by the landlord's first witness to the tenant. It contained an eviction notice as well as evidence, but does not remember the date.

An unsigned letter from the witness has also been provided for this hearing. The witness testified that he wrote something similar, but the letter in evidence was written for him, with his consent, and the contents are correct to the best of his understanding. It is dated July 25, 2020 and states that on June 12, 2020 the landlord asked him to be an interim manager, which was accepted, and that the witness was present when an envelope was handed to the tenant wife on June 27, 2020.

The witness also testified that he witnessed an altercation between the tenant husband and another tenant in the building about music being played. At that time, the tenant husband slammed a door and shattered a window. He has been aggressive while he was still manager of the apartment block and after.

**The tenant** (BB) testified that the testimony of the landlord and witnesses is fabricated. The tenant is a security guard and worked as such under previous management of the rental complex and then became manager of the complex.

Text messages have been sent to the landlord, but not aggressive; advising that the landlord should look up his rights and responsibilities of a landlord. They were meant to be helpful, and if the tenant hadn't done so, the landlord wouldn't be scrambling to make repairs. The tenant denies telling the landlord that he quit his duties as manager.

**The second tenant** (EN) testified that she is due to have a baby any day, and the carpet in the bedroom is in very poor shape and not healthy. The tenant wanted new carpet for that room and told the landlord that she would pay for new carpet and dump fees, but the landlord said there was plenty of time till the baby arrives, saying this rental unit would be next for renovations. Her husband jumped in saying that repairs had to get done or the tenants would have to find another place to live. Neither of the tenants told the landlord that they quit.

The back door is broken and easy to break in, and other repairs required. Photographs have been provided for this hearing.

### 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*. It is not for me to decide whether or not the tenants quit their position as

managers, or were fired. The landlord focused a lot of his testimony with respect to what he described as a personality conflict and aggressive behaviour by the tenant husband. The landlord also relies on an employment contract that indicates that if either party terminates the employment contract, the tenants will move out within 14 days. However, the parties have entered into a tenancy agreement, which I have also examined. I find that it is a binding contract and the *Residential Tenancy Act* applies, regardless of any employment contract.

The *Residential Tenancy Act* specifies how a tenancy ends, and the portion of the legislation that applies to this dispute states:

**48** (1) A landlord may end the tenancy of a person employed as a caretaker, manager or superintendent of the residential property of which the rental unit is a part by giving notice to end the tenancy if

(a) the rental unit was rented or provided to the tenant for the term of his or her employment,

(b) the tenant's employment as a caretaker, manager or superintendent is ended, and

(c) the landlord intends in good faith to rent or provide the rental unit to a new caretaker, manager or superintendent.

There is no evidence that the new caretaker, manager or superintendent intends to rent the rental unit. In fact, the new manager testified that his employment is interim, and the landlord testified that the new manager already resides in the complex in another unit. I find that the landlord has no intention of using the rental unit for another manager, and I cancel the Notice and the tenancy continues.

The tenants have also applied for an order that the landlord comply with the *Act*, regulation or tenancy agreement. I have reviewed the photographs and other evidentiary material of the parties, and considering the testimony of the tenant wife, I order that the landlord comply with the *Act* by making repairs to the rental unit that make it suitable for occupation by a tenant. Those repairs include, but are not limited to new carpet for the bedroom, repairs to the holes in the walls, replacing the bathroom door, and repairs to the back door and locks if required.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee, and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

### Conclusion

For the reasons set out above, the One Month Notice to End Tenancy For Cause or End of Employment dated June 27, 2020 is hereby cancelled and the tenancy continues.

I order the landlord to comply with the *Residential Tenancy Act* by making repairs to the rental unit, including but not limited to new carpet in the bedroom, repairs to the holes in the walls, replacing the bathroom door, and repairs to the back door and locks if required.

I hereby order that the tenants be permitted to reduce rent for a future month by \$100.00 as recovery of the filing fee, or may otherwise recover it.

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: August 11, 2020

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Residential Tenancy Branch