



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC, LRE

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act* (the “Act”) on July 28, 2020. The Tenants applied to cancel a 10-Day Notice to End Tenancy for Unpaid Rent, for an order for the Landlord to comply with the *Act*, and to suspend or set conditions on the landlord's right to enter the rental unit or site. The matter was set for a conference call.

The Landlord and both of the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

- Should the Notice to End Tenancy be cancelled?
- If not, is the Landlord entitled to an order of possession pursuant to section 55 of the Act?
- Should the Landlord be ordered to comply with the Act and/or tenancy agreement?
- Should the Landlord's right to enter the rental unit be suspend or have set conditions?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

At the outset of this hearing, this Arbitrator asked the Tenants for a copy of the Notice to end the tenancy. The Tenants testified they had not been issued a written notice to end the tenancy, but the Landlord had verbally evicted them.

The Landlord agreed that no formal eviction notice has been served for this tenancy.

The Tenants testified that on July 27, 2020, the Landlord entered their rental unit and removed the washer and dryer without notice.

The Landlord testified that they had not entered the rental unit on July 27, 2020, but that they had entered a common area to the rental property on August 7, 2020 and removed a washer and drying that is not part of this tenancy.

The Tenants testified that they Landlord attend the property without notice and stays for long periods of time.

The Landlord testified that there is a garage on the rental property that is not rented out with either of the upstairs or downstairs tenancies. The Landlord testified that they kept the garage out of both tenancies on purpose as they use the space.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 52 of the *Act* states:

#### **Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,

- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.**

I accept the testimony of both parties, and I find that there had been no Notice to End Tenancy issued by the Landlord in the approved form. In the absence of that form, I find that there is no Notice to End tenancy to cancel and that the tenancy continues until it is ended in accordance with the *Act*.

The Tenants have also requested that the Landlord be ordered to comply with the *Act* and to restrict the Landlord's access to the rental unit. During the hearing, these parties offered a conflicting verbal account of the Landlord's access to the rental property and rental unit. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, it is the Tenants that hold the burden of proof, as they are the applicants to these proceedings.

I have reviewed the Tenants' full application and all supporting documents received with that application, and I find that there is no evidence before me to show that the Landlord had breached the *Act*, the Regulation or the tenancy agreement during this tenancy.

As there was no Notice to End the Tenancy, nor any evidence presented of a breach of the *Act* by the Landlord, I must find that there was no breach of the *Act* by the Landlord, and I dismiss the Tenants' claim for an order for the Landlords to comply with the *Act* and for an order to restrict the Landlord's access to the rental unit.

Conclusion

I dismiss the Tenants' application.

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: September 1, 2020

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Residential Tenancy Branch