



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC, RP, OLC, FFT**

### Introduction

The words tenant and landlord in this decision have the same meaning as in the Act, and the singular of these words includes the plural.

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55;
- An order for regular repairs pursuant to sections 32 and 62;
- An order for the landlord to comply with the Act, Regulations and/or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The applicant/tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:22 a.m. to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. 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 attended the hearing, represented by property manager, HH ("landlord"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord acknowledged being served with the tenants' Application for Dispute Resolution Proceedings, however testified she did not receive any of the tenants' evidence. Only the evidence supplied by the landlord and her testimony was given consideration in this decision in accordance with Rules 7.3 and 7.4 of the Residential Tenancy Branch Rules of Procedure.

### Preliminary Issue

The tenants did not name the landlord named on the tenancy agreement in their Application for Dispute Resolution. Pursuant to section 64(3) of the Act, I amended the application to add that landlord. The full complement of landlords are listed on the cover page of this decision.

### Issue(s) to be Decided

Should the One Month Notice To End Tenancy for Cause be cancelled?

Should the landlord be required to perform repairs?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Can the tenant recover the filing fee?

### Background and Evidence

A copy of the tenancy agreement was provided as evidence. The fixed term tenancy began on March 15, 2020, becoming month to month on May 16<sup>th</sup>, 2020. Rent was set at \$975.00 per month payable on the first day of the month. Attached to the tenancy agreement is an addendum signed by the tenants and the landlord with 15 additional terms. Term 9 reads:

*The tenants agree that storage of dead vehicles, boats, campers, trailers, unlicensed vehicles etc. is prohibited on the property. No Washing or repairing of vehicles may be done on the property. Tenant parking is allowed in designated areas only. Visitors must park street side.*

On August 28, 2020, the landlord's agent, AK served the tenants with a One Month Notice To End Tenancy for Cause by posting it to the tenant's door. The landlord herself witnessed the service. A copy of the Notice was provided as evidence. It has an effective date of September 30, 2020 and provides the following reasons for ending the tenancy:

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;
2. the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
3. breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

The landlord acknowledged the third reason for ending the tenancy is invalid as no written notice to correct a material term of the tenancy was provided to the tenants before the notice to end tenancy was served.

The landlord testified that all the tenants in the building were given a letter on August 13<sup>th</sup>, advising the parking lot would be paved. Their cars must be removed by 9:00 p.m. on August 16<sup>th</sup>. The tenant's car had been vandalized just prior to August 16<sup>th</sup> and the tenants did not clean up the broken glass and debris. The landlord had to clean up the mess before the contractor could come pave the lot.

The tenants were notified not to return to the parking lot for 3 days to allow the paving to cure. The tenant moved his car offsite between 11 and 12 midnight on August 16<sup>th</sup> but reparked it before it was supposed to be used. This was done despite the tenant's reassurance to the landlord that he would not do so by text.

The landlord testified that the vandalized car was returned to the property in a state of disrepair with sharp, broken shards of glass everywhere. More sharp pieces of glass cover the seats and continue to fall out of the car, causing a danger to other residents in the building and creating an eyesore for the other tenants. The landlord fears the vandalized car would attract children to investigate it and they could potentially be harmed by the broken glass. Lastly, the landlord testified the tenant's car is currently unlicensed, so storing the car on the parking lot violates term 9 of the addendum to the tenancy agreement.

### Analysis

Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply. Rule 7.4 states that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend to present evidence, any written submissions supplied may or may not be considered.

The tenants did not attend the hearing which was scheduled by conference call at 11:00 a.m. and concluded at 11:22 a.m. As they did not attend, they did not present evidence regarding the merits of their application to cancel the Notice for me to consider.

The landlord provided compelling evidence to satisfy me the reasons for ending the tenancy were valid. I am satisfied the tenants failed to clean up the broken glass after their car was vandalized, thereby seriously jeopardizing the health or safety or lawful

right of another occupant or the landlord. I find it egregious that the tenants returned the vandalized car with the broken glass to the parking lot, further jeopardizing the safety of the other occupants of the building. I also find the tenant to be in breach of term 9 to the tenancy agreement addendum for storing their unlicensed vehicle in the parking lot, although this is not one of the reasons for ending the tenancy I base my decision upon.

Based on the above findings, I uphold the landlord's One Month Notice To End Tenancy for Cause issued on August 28, 2020.

Pursuant to section 55, 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 have examined the landlord's notice and find that it complies with the form and content provisions of section 52 of the *Act*, which states that the notice 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, and (e) when given by a landlord, be in the approved form.

The effective date stated on the notice to end tenancy has passed. The landlord is therefore entitled to an Order of Possession effective 2 days after service upon the tenants.

As this tenancy is ending, the remaining issues sought in the tenants' Application for Dispute Resolution are dismissed without leave to reapply.

The tenant's filing fee will not be recovered.

### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**.

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: October 27, 2020

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Residential Tenancy Branch