



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 42 HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

On September 10, 2020, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel the One Month Notice to End Tenancy for Cause, dated September 2, 2020 (the “One Month Notice”). The matter was set for a participatory hearing via conference call.

The Landlord’s representatives and the Tenants with their advocates attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

### Issue to be Decided

Should the One Month Notice be cancelled, in accordance with Section 47 of the Act?

### Background and Evidence

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.

Both parties agreed to the following terms of the tenancy:

The month-to-month tenancy began on December 1, 2015. The rent is \$862.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$500.00.

The Landlord provided testimony that they served the One Month Notice to the Tenants on September 2, 2020 by posting the Notice on the Tenants' door and by sending it via registered mail. The One Month Notice stated that the Tenants must move out of the rental unit by October 7, 2020 as the Tenants:

- have caused extraordinary damage to the unit.
- have not done required repairs of damage to the unit.
- have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Tenants agreed that they received a copy of the One Month Notice on September 2, 2020.

The Landlord testified that they have been working with the Tenants to support them throughout their tenancy.

The Landlord stated that they have been conducting annual condition inspections and have been noting that the Tenants have caused damage in the rental unit and have, on multiple occasions, been modifying or completing alterations to the rental unit without the Landlord's written permission. The Landlord submitted a copy of the Tenancy Agreement and referred to Clause #25 that speaks to the Tenants having to obtain the prior written consent of the Landlord to make any structural alterations, paint, paper or carpet the rental unit.

On December 4, 2018, a unit inspection was completed, and the Landlord noticed that a bathroom door and frame was severely damaged, that a handrail had been removed and that living room blinds were bent and removed.

On April 29, 2019, the Landlord conducted a unit inspection and noted there was a second freezer in the patio storage room and that blinds were attached to the fascia boards. There was a soft spot in the drywall in the kitchen bulkhead and a large piece of drywall missing above the handrail on the second-floor landing.

The Landlord submitted a letter sent to the Tenants on May 24, 2019, about the damage to their unit and repair charges that were owing. The letter included outstanding repairs and a detailed chart of charges as a result of the Tenants' damages to the unit.

The Landlord conducted another unit inspection on August 19, 2020 and found that a second lock was installed, that the carpet was removed and laminate flooring with new wooden baseboards were installed, and, a dishwasher was installed by removing part of the kitchen cabinet. The Landlord noted that the dishwasher was not installed properly, and that the Tenants purchased a new fridge and stove, moving the old fridge to the deck and discarding the original stove. The Landlord testified that none of these alterations were approved by the Landlord.

The Landlord added that the Tenants had poorly installed the toilet in the rental unit; it had leaked and caused damage to the bathroom floor and the ceiling below.

The Landlord stated that they forwarded the long list of damages, that were noted during the August 19, 2020 inspection, to the Tenants and no changes have been made.

As a result, the Landlord served the Tenants the One Month Notice on September 2, 2020.

The Landlord acknowledged when questioned, that their protocol has been to conduct the inspections, have any damages repaired and subsequently, charge the Tenants for the repairs.

The Landlord is frustrated with the Tenants as they keep making alterations to the rental unit without permission, causing damage to the rental unit by doing their own renovations, and are failing to care for the unit. The Landlord is requesting an end to the tenancy based on a breach of the material terms and the ongoing damages to the rental unit.

The Landlord is requesting an Order of Possession for November 30, 2020.

The Tenants' advocates, throughout the hearing, translated for the Tenants and represented their interests (referred to as the Tenants unless specifically referred to as Advocates).

The Tenants testified that they are a refugee family and that it has been difficult for them to understand the Tenancy Agreement and the subsequent letters that have been sent to them from the Landlord.

The Tenants stated that they are willing to pay for the repairs and eager to resolve the issues with the Landlord. The Tenants submitted that the alterations made to the rental unit have been upgrades and not damage. The Tenants stated that they have added new appliances and replaced carpeting with laminate flooring in an attempt to improve their living arrangements.

The Tenants submitted that the past process has been for the Landlord to do a unit inspection and potentially follow-up with repairs and subsequent billing. As a result, the Tenants were unaware that their actions could result in the loss of their tenancy.

The Tenants stated that there has been no documentation from the Landlord requesting them to put the rental unit back into its original form, no dates for completion provided, and no indication that their tenancy would end if not accomplished.

The Advocates for the Tenants acknowledged that they could have done a better job helping the Tenants understand their responsibilities to the Landlord and to follow the Tenancy Agreement. The Advocates testified that, although they had been involved with the Tenants' family prior to May 2020 to assist with issues related to rent, they have only recently been involved regarding the alterations and maintenance of the rental unit.

### Analysis

Pursuant to section 47 of the Act, a landlord may end a tenancy by giving a Notice to End Tenancy if the Tenants:

- have caused extraordinary damage to the unit.
- have not done required repairs of damage to the unit.
- have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In this case, the Landlord has submitted that the Tenants have potentially caused extraordinary damage to the rental unit by installing laminate flooring and baseboards with nails that may be piercing plumbing lines; by damaging cabinets to install a dishwasher, and by causing leaks as a result of a poorly installed toilet.

The Landlord has also referenced the material term in the Tenancy Agreement, which states in part, the Tenants must not make any structural alterations, paint, paper or carpet the rental unit without having to obtain the prior written consent of the Landlord.

After reviewing the Landlord's evidence, I find that they did not speak to any required repairs that the Tenants were responsible to complete, rather raised concerns about the Tenants doing their own repairs. As such, I dismiss this part of the Landlord's claim and will focus on the claim that the Tenants have caused extraordinary damage and have breached a material term.

I note that the *Residential Tenancy Act* uses the strong word "extraordinary" to ensure that a landlord can only end the tenancy if the damages caused by the tenants are very unusual or remarkable.

I accept that the Landlord has provided evidence to demonstrate that the Tenants have caused damage to the rental unit where they may be responsible for repairing this damage pursuant to Section 32(3) of the Act; an example being poor painting, a damaged door or damage to the carpet. I also acknowledge that the Landlord's have set a precedent by inspecting the rental unit and initiating the repairs themselves; subsequently, billing the Tenants for the repairs.

The Landlord has also submitted evidence relating to damaged cabinets caused when the Tenants installed a dishwasher; damage caused to the ceiling as a result of a poorly installed toilet; and, potential damage that could occur by the installation of new laminate flooring and baseboards. I find, based on the Landlord's testimony and evidence that the Landlord has failed to provide sufficient evidence to prove that the damage caused by the Tenants meets the standard of "extraordinary" damage and dismiss this part of the Landlords' claim.

*Residential Tenancy Policy Guideline #8* speaks to material terms:

"To end a tenancy agreement for breach of a material term the party alleging a breach, whether landlord or tenant, must inform the other party in writing that there is a problem; that they believe the problem is a breach of a material term of the tenancy agreement; that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and, that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem."

In this case, I find that the Landlord has shown diligence when working with the Tenants to address some of the tenancy issues and communicating with them about the identified problems. However, I find that the Landlord has not demonstrated their responsibility to inform the Tenants in writing that the problem is a breach of a material term; that the problem must be fixed by a deadline included in the letter; that the

deadline be reasonable; and, that if the problem is not fixed by the deadline, the Landlord will end the tenancy. As such, I dismiss this part of the Landlord's claim.

As a result of finding the reasons for the One Month Notice invalid, I cancel the One Month Notice and authorize the tenancy to continue until ended in accordance with the Act.

### Conclusion

The One Month Notice to End Tenancy for Cause, dated September 2, 2020, is cancelled.

The tenancy will continue until ended in accordance with the Act.

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: November 04, 2020

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Residential Tenancy Branch