



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, MNDCT, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

### Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice and the continuation of this tenancy is not sufficiently related to any of the tenants' other claims to warrant that they be heard together.

The tenants' other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notice. I exercise my discretion to dismiss all of the tenants' claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

### Issues to be Decided

1. Are the tenants entitled to cancellation of the Notice?
2. Are the tenants entitled to recover the filing fee?
3. If the tenants' application is dismissed, are the landlords entitled to an order of possession?

### Background and Evidence

While I have turned my mind to all the accepted evidence provided by the parties, including documentary evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here.

Both parties agreed the fixed-term tenancy started on June 01, 2020. Monthly rent is \$2,900.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$1,450.00 was collected and the landlords still hold it in trust. The tenancy agreement was submitted into evidence. The tenants continue to reside at the rental unit.

Both parties agreed the tenants received the Notice on September 19, 2020. A copy of the Notice was provided. The Notice is dated September 19, 2020 and the effective date is October 31, 2020. The reason to end the tenancy is:

- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
  - Jeopardize a lawful right or interest of another occupant or the landlord;

The details of cause specify:

Impending our rights as landlord to sell our property  
-verbally abusive to realtor who now wants to quit as she doesn't feel safe with tenants  
-telling potential buyers about 'security issued in bike locker'  
-causing damage to the property (door handle)  
\*All document with evidence

The landlord affirmed on July 04, 2020 the tenants were informed the rental unit is listed for sale and the landlord will always provide the tenants ample notice of the showings and open houses. On July 28, 2020 the tenants left the rental unit in poor condition for the showing. There were dirty dishes, objects all over the floor, carpet stains and the sinks were dirty. Photographs were submitted into evidence. The tenants stated the carpet had stains when the tenancy started.

In the last weekend of July 2020 the landlords were planning to have an open house on Saturday and Sunday. However, as the tenants requested, the open house was only on Sunday.

On August 11, 2020 the tenants complained to the landlord about breach of quiet enjoyment due to the open houses. The landlord replied:

I'm sorry you feel that we are interrupting your quiet and enjoyment time, however we feel entering the unit once a week for two hours is a lot better then [SIC] multiple times a week. I put myself in your shoes and as a busy mom that is what I would rather. If you don't agree we can look at doing the showing through out the week. Let me know what you think.

Please believe us when we say the last thing we want to do is cause any problems. We are trying to sell the condo as fast as we can so we can stop having to bother your family.

The landlord stated that by August 11, 2020 the landlords had entered the rental unit only 5 times in the previous 5 weeks, and in 2 of those occasions the tenants were away on vacation.

The landlord said on August 16, 2020 tenant CB had an argument with the realtor and yelled at her. Tenant CB denied any kind of argument or yelling at the realtor.

On the August 30, 2020 open house tenant CB told potential buyers that a bicycle was stolen from the rental building storage. The landlord is not aware of a stolen bicycle. Tenant CB affirmed a bicycle was stolen from the rental building storage and other tenants advised the tenant to keep his bicycle in the rental unit. Tenant CB also stated he only answered questions that potential buyers asked him and these questions should be addressed to the realtor.

On September 13, 2020 the tenants messaged the landlords about a damaged door handle in the rental unit. A photograph and the text message were submitted into

evidence. The tenants affirmed the damage to the door handle was an accident and they will replace it as soon as they find the door handle.

On September 27, 2020 the realtor texted the landlords regarding the tenants:

I think we should cancel the open if he is going to be there. It is uncomfortable to do a showing with them home let alone an open for 2 hours. His hate towards me is starting to make a bit nervous in the sense to sit there for 2 hours with him. I hope you understand.

I think it would be better to have one of the men on my team host. I can ask if anyone is available.

The landlord affirmed the tenants informed them on October 03, 2020 they did not receive proper notice about the October 04 open house. The realtor attended the open house the next day with six potential buyers, tenant CB yelled at the realtor and did not authorize them to enter the rental unit. One of the potential buyers submitted an offer for a similar unit on that day. Tenant CB stated he called the police because he did not authorize the realtor to enter the rental unit as he did not receive a proper written notice and denied having an altercation with the realtor or yelling at her. An unsigned letter from the realtor was submitted into evidence.

The landlord affirmed since early October the tenants are requiring a printed written notice for the open houses and showings. On October 11, 2020 the tenants left the rental unit in poor conditions for the open house and had not repaired the damaged door.

The landlord stated potential buyers did not submit offers because the tenants are providing inaccurate negative information about the rental building and damaging the rental unit. The rental unit has been listed since July 2020. Only one extremely bad offer was submitted because of the poor rental conditions of the rental unit. A similar unit in the rental building was sold in four days last month.

### Analysis

A tenant may dispute a notice to end tenancy for cause pursuant to section 47(4) of the Act. The tenant was served the Notice on September 19, 2020 and filed this application on the next day. I find the tenant disputed the Notice within the time frame of section 47(4) of the Act.

The landlord's have alleged in the Notice that the tenants are engaged in illegal activity. Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In the case before me, both parties have provided conflicting testimony regarding several issues between the tenants, the landlords and the realtor.

The September 27, 2020 text message does not mention any yelling or abusive behavior or any behavior that is allegedly against the law. Furthermore, this text message was sent after the Notice was issued. The realtor's letter is not signed and the realtor did not attend the hearing as a witness. Thus, this letter has no evidentiary importance. Based on the tenants' cohesive testimony, I find, on a balance of probabilities, the tenants were not abusive to the realtor or yell at her.

Section 32(2) of the Act states: "A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access."

Based on the tenants' testimony and photographs submitted by the landlords, I find the tenants are not causing damage to the rental unit and are complying with section 32(2) of the Act. I am satisfied with the explanation provided by the tenants about the rental unit's damaged door.

Furthermore, the landlords failed to provide satisfactory evidence the tenants are spreading false information about the rental unit or that the tenants engaged in illegal activity.

As such, I find the landlords failed to prove, on a balance of probabilities, the grounds of the Notice. Accordingly, the Notice is cancelled and of no force or effect.

As the tenants were successful, I find they are entitled to recover the \$100.00 filing fee, pursuant to section 72 of the Act. I order that this amount may be deducted from the next rent payment.

For education purposes, I note that the landlord must provide a written notice to the tenants at least 24 hours before entering the rental unit, per section 29(1)(b) of the Act. The means by which the written notice may be given to the tenants are found in section 88 of the Act. "How to give or serve documents generally". Section 90 sets out when the

documents are considered to be received. For example, when the notice is attached to the rental unit's door, it is deemed served on the third day after it is attached, in accordance with section 90 (c) of the Act. The Act does not require these days to be business days. Thus, if a 24-hour notice is taped to the tenants' door on Friday, it is deemed served on Monday, and the landlords can exercise their reasonable right to enter the rental unit to conduct showings or an open house on Tuesday.

### Conclusion

The One Month Notice dated September 19, 2020 is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

The tenants are authorized to deduct \$100.00 from the next rent payment, pursuant to section 72(2)(a) of 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 18, 2020

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Residential Tenancy Branch