



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on September 29, 2020 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated September 22, 2020 (the “Notice”). The Tenant also sought reimbursement for the filing fee.

The Tenant appeared at the hearing with the Co-tenant. The Landlord appeared at the hearing. I explained the hearing process to the parties. The parties provided affirmed testimony.

The Landlord said at the outset of the hearing that she wished to call three witnesses at the hearing. I heard the parties on the grounds for the Notice which took until 12:03 p.m., past the one hour set for this hearing. I told the Landlord she could call the witnesses, but we would need to adjourn to hear from them on another date given we had used the hearing time set. I made it clear to the Landlord that it was open to her to call witnesses. In response to a question from the Landlord, I made it clear that I could not tell her whether she should call witnesses. The Landlord chose not to call the witnesses given the hearing would have to be adjourned to do so. I note that the parties were told at the outset that the hearing was set for one hour. I also note that the Tenant and Co-tenant were focused and relatively brief in their submissions.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlord confirmed receipt of the hearing package and Tenant’s evidence.

The Tenant advised that he received the Landlord’s evidence by email four days before the hearing. The Tenant advised that the email was in his spam folder and he did not

see it earlier. The Tenant acknowledged the email had been sent by the Landlord three weeks prior to the hearing. The Tenant had not submitted evidence that the email was located in his spam folder. The Tenant confirmed he had reviewed the evidence. The Tenant said he had not had a chance to reply to the evidence. I asked the Tenant what he had wanted to submit in reply to the evidence. The Tenant said he would have submitted photos of the condition of the backyard, toilet and bathtub. I told the Tenant we would proceed with the hearing and I would consider this issue at the end of the hearing once I had heard the parties on the issues in the Application.

At the end of the hearing, I addressed the issue of photos of the backyard, toilet and bathtub again. I asked the Tenant and Co-tenant when the photos were taken. They said they could take them anytime and that they do not currently have the photos. I explained to the Tenants that photos taken now do not assist as the issue before me is whether the Landlord had grounds to issue the Notice on September 22, 2020. I explained that the issue is not whether the backyard and bathroom are now clean. I told the Tenant and Co-tenant I would not further consider allowing the proposed evidence to be submitted given it is not relevant.

In relation to the Landlord's evidence, it had to be served on the Tenant not less than seven days before the hearing pursuant to rule 3.15 of the Rules of Procedure (the "Rules"). I am satisfied the Landlord sent the Tenant the evidence three weeks before the hearing and therefore complied with rule 3.15 of the Rules in relation to timing.

The Landlord was required to serve the evidence in accordance with section 88 of the *Residential Tenancy Act* (the "*Act*"). Email is not a form of service permitted by section 88 of the *Act*. However, I am satisfied the Landlord sent the evidence by email three weeks before the hearing as the Tenant acknowledged this. I am also satisfied the Tenant received the evidence by email as the Tenant acknowledged receiving it. I am not satisfied the email went into the Tenant's spam folder as I would expect to see some evidence to support this and there is insufficient evidence of this before me. Therefore, I am satisfied pursuant to section 71(2) of the *Act* that the Tenant was sufficiently served with the evidence.

Further, I would not have excluded the evidence pursuant to rule 3.17 of the Rules because the Tenant acknowledged he had a chance to review the evidence and therefore I am satisfied the Tenant was able to speak to the evidence at the hearing and that the Tenant was not prejudiced by receiving the evidence late. The only prejudice the Tenant pointed to was not being able to submit photos, not yet taken, to contradict the Landlord's photos. As explained above, photos not yet taken are not relevant to the

issue I must decide. The Tenant was not prejudiced by not having time to submit photos that are not relevant to the issue I must decide.

Given the above, I have considered all evidence submitted.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

### Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to reimbursement for the filing fee?

### Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is the original tenancy agreement in this matter. It was between the Landlord's father and the Tenant. It started October 15, 2015. The Landlord advised that she purchased the rental unit in January of 2017 and therefore became the landlord. The Tenant did not dispute these points.

The Landlord testified as follows. A new written tenancy agreement was done in the spring of 2018 between her and the Tenant. It was a month-to-month tenancy. She cannot recall what rent was but believes it was \$1,450.00. Rent was due on the first day of each month. The parties agreed to transfer the security deposit from the first tenancy agreement to the second tenancy agreement. The Tenant would not agree to pay a pet damage deposit so there was no agreement about a pet damage deposit in the tenancy agreement. The Tenant agreed to pay utilities and do upkeep on the house. The agreement was signed by her and the Tenant. This written tenancy agreement was lost.

The Co-tenant stated that she and the Tenant are aware a new tenancy agreement was done but that there is no record of it. She stated that the new tenancy agreement was signed in September of 2019.

The Tenant testified as follows. He and the Landlord signed a new written tenancy agreement starting in September of 2019. It was a month-to-month tenancy. Rent was \$1,450.00 due by the first day of each month. The parties agreed to transfer the security deposit from the first tenancy agreement to the second tenancy agreement. There was no agreement about a pet damage deposit in the tenancy agreement and the Tenant was not asked for a pet damage deposit.

All parties agreed the Co-tenant is a co-tenant under the tenancy agreement.

The Notice was submitted as evidence and includes the following grounds:

1. Tenant or a person permitted on the property by the tenant has...
  - a. Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
  - b. Put the landlord's property at significant risk.
2. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit...or property...
3. Tenant has not done required repairs of damage to the unit [or] property
4. Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

There was no issue that the Notice was served on the Tenant in person September 22, 2020.

The parties testified as follows in relation to the grounds for the Notice.

1. ***(a) 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.***

The Landlord testified as follows. The tenants leave dog feces all over the backyard on a regular basis. The children that live in the basement unit play in the backyard and could get sick from the dog feces. The tenants do not pick the dog feces up. She has asked the tenants to clean the dog feces up on a regular basis and they

have not done so. She gave the tenants a warning. The tenants picked the dog feces up for two days after receiving the warning but then went back to not picking it up. This issue costs her rental income for future tenants who do not want to rent the lower unit because of the dog feces. Photos of this issue are in evidence.

The Tenant testified as follows. The tenants pick up the dog feces. There are other dogs on the property. The photo in evidence shows a small piece of dog feces and it is not clear when this was taken. There is not an excessive amount of dog feces in the backyard.

The Co-tenant testified that the tenants pick up dog feces multiple times a day on a daily basis.

In reply, the Landlord denied that other dogs have access to the area shown in the photos.

**1. *(b) Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.***

The Landlord testified as follows. This ground is based on the dog feces issue, the yard being unkept, the inside of the house being unkept and the house being filthy inside and out. These issues decrease the value of the property. She will have to spend a lot of money to repair and clean the rental unit.

The Co-tenant testified as follows.

The tenants have submitted photos of the backyard showing it in its normal state. The house is not filthy. Sometimes the tenants are not aware of flyers around the outside of the house. The house is not in ill repair.

The photos of the bathroom in evidence are from September of 2019. The Landlord has visited the rental unit since and there has been no further issue.

In reply, the Landlord testified as follows. The photos of the bathroom in evidence were taken in September of 2019. The bathroom has been much cleaner since but there is still some grime.

**2. *Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit...or property...***

The Landlord said this ground is based on the toilet issue detailed below.

**3. *Tenant has not done required repairs of damage to the unit...property...***

The Landlord testified as follows.

The tenancy agreement says the Tenant will maintain the yard. There are newspapers around the front of the house and the yard is unkept. The bushes cover the house and there are dog feces in the yard.

In 2018, the toilet in the rental unit flooded causing water to leak and damage the floor and ceiling of the rental unit below. The floor and ceiling needed repairs. The tenants did not repair the damage. She has been repairing the damage bit by bit. She has asked the tenants to contribute to the water damage repair. She does not know what caused the toilet to overflow. The tenants admitted their daughter left the "pushing thing" down, that it stayed down and that water kept leaking. She asked the tenants verbally in 2018 to repair the damage. She has not asked the tenants to do repairs since 2018.

Prior to 2018, a fish tank in the rental unit also leaked. Two months ago, she noticed damage to the rug in the rental unit and that the dishwasher is broken. She did not ask the tenants to do repairs in relation to these issues.

The Co-tenant testified as follows.

The toilet malfunctioned on November 04, 2018. The tenants had flushed the toilet and left the house so did not realise the toilet was overflowing until they returned. They notified the Landlord of the issue. The malfunction was not the fault of the tenants. The tenants were not asked to make any repairs. The tenants do not have access to the lower rental unit to make repairs there.

There is no significant problem with, or damage to, the carpet. The carpet is 12 years old and shows normal wear and tear. The tenants have three children. The tenants have not been able to rent a carpet cleaner during the pandemic.

The issue with the fish tank occurred before the toilet issue. The tenants offered to pay for the damage and never heard back.

The Tenant testified that the dishwasher is six years old and is not working due to a mechanical issue, not due to something the tenants did.

In reply, the Landlord testified that the tenants did not offer to pay for damage in relation to the toilet issue.

***4. Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.***

The Landlord said this ground is based on the tenants not agreeing to pay a pet damage deposit despite having a pet. The Landlord acknowledged there was no requirement in the tenancy agreements that the tenants pay a pet damage deposit.

The following relevant evidence was submitted:

- A letter from the Landlord to the Tenant dated September 04, 2020 about flooding damages and dog feces.
- Photos from the Landlord of the backyard, each photo showing one area of dog feces. There are five photos which appear to show four different incidents.
- Photos of water damage.
- Photos showing a dirty sink, tub, toilet and carpet.
- Photos showing newspaper around the side of the house.
- Photos of an unkept yard.

Analysis

The Notice was issued pursuant to section 47 of the *Act*. The tenants had 10 days to dispute the Notice. There was no issue that the Tenant received the Notice September 22, 2020. The Application was filed September 29, 2020, within time.

Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I find as follows in relation to the grounds for the Notice.

**1. (a) *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.***

Section 47(1)(d)(ii) states:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...

(d) the tenant or a person permitted on the residential property by the tenant has...

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant...

The basis for this ground is the tenants leaving dog feces in the backyard.

The parties provided conflicting testimony about whether the tenants leave dog feces in the backyard. Therefore, I have considered the evidence provided to support the Landlord's testimony.

I am not satisfied based on the evidence provided that the tenants have seriously jeopardized the health or safety or lawful right of another occupant or the Landlord in relation to the dog feces issue.

The only evidence provided to support the Landlord's testimony is the September 04, 2020 letter and five photos of dog feces. This is not compelling evidence of an ongoing, repetitive or serious issue. If this were an ongoing, repetitive or serious issue, I would expect to see more correspondence about it between the parties rather than one letter sent two-and-a-half weeks prior to the Notice being issued. Further, the photos are not dated such that I can tell when they were taken and therefore are not compelling evidence of an ongoing, repetitive issue. Further, there is no evidence before me from the other tenants who live on the property to support



that there is an issue with dog feces in the backyard. Nor is there documentary evidence to support that potential tenants declined to rent on the property due to dog feces in the backyard.

In the circumstances, I am not satisfied the tenants leave dog feces in the backyard on an ongoing, regular basis. At best, I am satisfied the tenants have left dog feces in the backyard for some period of time four times in the last five years that they have lived in the rental unit. I am not satisfied the dog feces issue is anything but a minor issue. Given this, I am not satisfied the dog feces issue has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

The Landlord has failed to prove this ground of the Notice.

**1. (b) *Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.***

Section 47(1)(d)(iii) of the *Act* states:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...

(d) the tenant or a person permitted on the residential property by the tenant has...

(iii) put the landlord's property at significant risk;

The Landlord said the basis for this ground is the dog feces issue, the yard being unkept and the house being unkept and filthy inside and out. I am not satisfied based on the evidence provided that any of these issues put the Landlord's property at significant risk.

Again, the only correspondence I have before me between the parties about the issues raised is the September 04, 2020 letter. I would expect to see further correspondence about the issues raised if they were causing significant risk.

In relation to the photos showing dog feces, newspaper in the yard and an unkept yard, I find these photos show relatively minor issues. Further, the photos of the bathroom are from 2019 and only show a dated issue.

As well, the issues raised mostly relate to cleanliness and whether the house is tidy. Cleanliness issues would need to be severe or extensive to find that they pose a significant risk. The evidence provided does not show a severe or extensive issue that is ongoing.

I find the issues raised are issues that can be addressed without any lasting affect on the property. Further, they are issues the tenants will have to address at the end of the tenancy pursuant to section 37 of the *Act*.

The Landlord has failed to prove this ground of the Notice.

**2. *Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit...or property...***

Section 47(1)(f) of the *Act* states:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

The Landlord said this ground is based on the toilet issue. The Landlord said she does not know what caused the toilet to overflow and that the tenants' daughter flushed the toilet, the handle stayed down and the water overflowed. The Co-tenant said the overflow was caused by a malfunction which was not caused by the tenants. The Landlord has not submitted any documentary evidence about what caused the toilet to overflow, such as a report from a plumber. In the absence of further evidence, I am not satisfied the tenants did something to cause the toilet to overflow and am not satisfied the tenants caused the resulting damage.

The Landlord has failed to prove this ground of the Notice.

**3. *Tenant has not done required repairs of damage to the unit...property...***

Section 47(1)(g) of the *Act* states:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time;

Section 32(3) of the *Act* states:

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

The Landlord raised six issues including the unkept yard, dog feces issue, toilet issue, a fish tank leak, damage to the rug and a broken dishwasher.

The unkept yard and dog feces issues are not repair issues.

As stated above, I am not satisfied based on the evidence provided that the toilet issue was caused by the actions or neglect of the tenants and therefore I am not satisfied the tenants were required to repair the resulting damage pursuant to section 32(3) of the *Act* and am not satisfied section 47(1)(g) of the *Act* applies in relation to this issue.

The fish tank issue is not grounds to end this tenancy given it occurred prior to 2018 and the Landlord did not ask the tenants to do repairs in relation to this issue, which is the logical first step before attempting to end a tenancy under this ground.

I am not satisfied based on the evidence provided that the tenants have damaged a rug or carpet. It may be that the rug or carpet requires cleaning, but this is a separate issue from damage that requires repair.

I am not satisfied the tenants have damaged the dishwasher as the Tenant denied this and there is no documentary evidence before me to support that the tenants have.

The Landlord has failed to prove this ground of the Notice.

**4. *Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.***

Section 47(1)(a) of the *Act* states:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;

As acknowledged by the Landlord, there was no requirement in the tenancy agreements that the tenants pay a pet damage deposit. Therefore, the tenants not paying a pet damage deposit is not a basis to end the tenancy pursuant to section 47(1)(a) of the *Act*.

The Landlord has failed to prove this ground of the Notice.

I have considered the issues raised both separately and together. I am not satisfied that the issues raised are grounds to end this tenancy and in fact find that the Landlord is attempting to end this tenancy for minor issues, dated issues and reasons that are not valid reasons to end a tenancy under the *Act*. I cancel the Notice. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenant was successful in the Application, I award the Tenant \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from one future rent payment.

Conclusion

The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*. The Tenant can deduct \$100.00 from one future rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 09, 2020

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Residential Tenancy Branch