



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancelation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed facts: The tenancy started in September 2013. Rent of \$1,300.00 is payable on the first day of each month. The Landlord is holding a security deposit of \$500.00. On October 14, 2020 the Landlord sent the Tenant a one month notice to end tenancy for cause (the “Notice”) by registered mail. The reasons stated on the Notice is that the Tenant seriously jeopardized the health, safety or lawful right of another occupant or the landlord or put the landlord’s property at significant risk and that the Tenant engaged in illegal activity that damaged the landlord’s property. The Notice

includes details of the reasons. The laundry room in the unit contains both an air conditioner and a washing machine.

The Landlord states that the Tenant put its property at significant risk by failing to inform the Landlord of a leak from a washing machine and a leak from the air conditioner that caused damage to the unit and to another suite directly below the unit. The Landlord states that they have no evidence that the Tenant caused either leak. The Landlord states that they did not become aware of the leaks until informed by the management company on August 5, 2020. The Landlord states that the leak from the washing machine occurred in June or July 2020 as this is when the person occupying the lower suite reported the leak to the management company.

The Landlord states that on August 5, 2020 they believed that the leak may be coming from the washing machine and that after telling the Tenant to not use the washing machine the Tenant told them about the washing machine leak but that it was rectified 8 months prior. The Landlord states that on August 5, 2020 no leak was detected from the washing machine. The Landlord states that they assume that the leak to the lower suite in June or July 2020 came from the washing machine and not the air conditioner. The Landlord states that in September 2019 the Tenant was told to remove shelving that the Tenant had put up against the wall in the laundry area. The Landlord states that the Tenant likely moved the washing machine to remove the shelves causing a clip on the drainpipe to be dislodged. The Landlord states that in August 2020 the Landlord noted that the washing machine had been moved away from the wall and the shelves were gone.

The Landlord states that they do not have any evidence that the Tenant caused the air conditioner to be damaged, but they believe that the amount of damage to the laundry room indicates that the leak from the washing machine was longstanding. The Landlord states that the Tenant must have known about the leak from the air conditioner given the amount of damage and rust under the air conditioner. The Landlord has no

evidence of the amount of damage to the lower unit but believes that a claim has been made against their insurance. The Landlord states that the Tenant has been problematic in the past with a number of bylaw breaches, some of which have been repeated and that the Tenant cannot be trusted to report any damage to the unit.

The Landlord states that the restoration report indicates that given the amount of water damage to the laundry room walls, baseboard and flooring, there was long term leakage. The Landlord provides a copy of an email from the restoration company and confirms that this email does not indicate where the leakage causing the long-term damage came from. The Landlord provides photos and states that mold was also present.

The Landlord states that the Tenant has had a barbeque and smoked cannabis on the deck contrary to the rules. The Landlord argues that these are illegal activities. The Landlord also argues that the smoking of cannabis is also serious jeopardy. The Landlord confirms that it has no evidence to support this argument.

The Tenant states that a small leak from the washing machine was noticed in January 2020 but that the leak occurred from a small clip having popped off the drain line. The Tenant states that she repaired the clip and that there was no further leak. The Tenant states that the small leak did not cause any damage and did not continue to result in the damage to the baseboards, wall and flooring. The Tenant states that all the damage arose from the small leak from the air conditioner and that the Tenant did not see the leak as it was coming from behind the air conditioner. The Tenant states that it also had boxes of expensive books and other valuables on the floors in the room. The Tenant states that it would not have left them to be damaged by a leak. The Tenant states that there was no negligence, that nothing was noticed until August 2020 and that as a past homeowner the Tenant knows how to be on top of things. The Tenant states that it was never told of any damage to the lower suite prior to August 5, 2020. The Tenant states

that her daughter has now moved out of the unit and the Tenant only wants to live peacefully.

### Analysis

Section 47(1) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia,

- the tenant or a person permitted on the residential property by the tenant has
  - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - put the landlord's property at significant risk;
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property.

The Landlord gave evidence of the Tenant smoking cannabis and using a barbeque on the deck as illegal activity. However, as there is only evidence of a breach of rules by carrying out these activities, I find that the Landlord has not substantiated that the Tenant carried out illegal activities. Further there is no evidence that the cannabis smoking caused any jeopardy to anyone. The Notice is therefore not valid for illegal activities or for jeopardizing the health safety or lawful right or interest of anyone.

There is no evidence that the Tenant caused any damage to the washing machine that caused an ongoing leak leading to long term damage. Further the Landlord's evidence that a leak from the washing machine occurred in July 2020 is not supported. The correspondence from the restoration company that attended in August 2020 and found a leak from only the air conditioner only refers to long term damage and not from where the long-term damage came. For these reasons and given the Tenant's evidence of a small leak from the washing machine hose that was immediately rectified I find on a balance of probabilities that the Landlord has not substantiated that the washing machine was subject to an ongoing leak that the Tenant should have reported.

Given the undisputed evidence of rust having been found on the air conditioner I find on a balance of probabilities that there was a long-term leak from the air conditioner. There is no evidence that the Tenant caused the air conditioner to leak. There is only

an assumption that the Tenant knew of the leak based on the extent of the damage to the laundry room however given the Tenant's undisputed evidence that the leak came from behind the air conditioner, the Tenant's undisputed evidence of damage to its own property that I accept, given the photos of the room, would have obscured areas of the damage, and the Tenant's evidence of only discovering the damage in August 2020 I find on a balance of probabilities that the Landlord has not substantiated that the Tenant knew of the leak until it was discovered in August 2020. For these reasons I find on a balance of probabilities that the Landlord has not substantiated that the Tenant acted or failed to act thereby putting the Landlord's property at significant risk. As none of the reasons for the Notice have been substantiated, I find that the Notice is not valid for its stated reasons and that the Tenant is entitled to cancellation of the Notice. the tenancy continues.

As the Tenant has been successful with its claim to cancel the Notice, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this claim.

### Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: January 20, 2021

---

Residential Tenancy Branch