



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC, FFT**

### Introduction

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

- Cancellation of a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47; and
- Authorization to recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlords were represented by their agent.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not are the landlords entitled to an Order of Possession?

Are the tenants entitled to recover their filing fee from the landlords?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This fixed term tenancy began in April 2020. The monthly rent is \$2,800.00 payable on the first of each month. A security deposit of \$1,250.00 was paid at the start of the tenancy and is still held by the landlord. The rental unit is a detached house with the tenant the sole occupants of the building. A copy of the signed tenancy agreement was submitted into evidence.

The landlords issued a 1 Month Notice dated February 24, 2021 on the tenants on that date. The reasons provided on the notice for the tenancy to end is that:

- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
- Tenant or person permitted on the property by the tenant has caused extraordinary damage to the unit.

The landlord provides as details of the cause that the tenant has removed and disposed of various items that were left on the rental property by the landlord including; a reclining love seat, wicker chair, ottoman, work bench, shelves and refrigerator. In addition, the landlord submits that the tenants have erected a skateboarding half pipe unit in the driveway of the rental property.

The landlord submits that while the signed tenancy agreement does not provide that the suite is furnished, the tenants were aware of all of the items on the rental property when the tenancy commenced and that their removing of these items constitutes a breach of the agreement and extraordinary damage.

The parties submitted a copy of the condition inspection report which they say was completed after the tenancy had commenced. The report notes the presence of some of the furniture in the rental property.

### Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenant has put the landlord's property at significant risk or caused extraordinary damage to the unit.

Based on the totality of the evidence I am not satisfied that the landlords have met their evidentiary burden on a balance of probabilities to establish that there is cause for this tenancy to end. I find that removing some old furniture left on the rental property by the landlords to not be reasonably characterized as extraordinary damage or significant risk to the property. I find the removal and disposal of a few pieces of used furniture strewn about the rental property to not have major impact on the property such that it could reasonably be considered extraordinary damage. I do not find the removal of some makeshift partitions, shelving or placing a skateboarding structure on the driveway to be alterations that pose any risk to the property or to be considered damage.

The landlord is certainly at liberty to apply for a monetary award at the end of the tenancy if they believe that due to the removal of detritus and old appliances they have incurred any loss. However, I do not find that the removal of some pieces of furniture or appliances or bringing in items onto the property constitutes damage or risk that it gives rise to a basis for a notice to end the tenancy. I do not find the nature of the complaints about the tenants' activities or the degree of the impact demonstrated in the evidentiary materials to reasonably give rise to cause for this tenancy to end. Accordingly, I allow the tenants' application and cancel the 1 Month Notice of February 24, 2021.

As the tenants were successful in their application they are also entitled to recover their filing fee from the landlords. As this tenancy is continuing I allow the tenants to satisfy this monetary award by making a one-time deduction of \$100.00 from their next scheduled monthly rent payment.

Conclusion

The tenants' application to cancel the 1 Month Notice is successful. This tenancy continues until ended in accordance with the Act.

The tenants are permitted to make a one-time deduction of \$100.00 from their next scheduled 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 *Residential Tenancy Act*.

Dated: June 14, 2021

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Residential Tenancy Branch