



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, OLC

### Introduction

The Tenants apply to cancel a One-Month Notice to End Tenancy dated October 26, 2021 (the “One-Month Notice”) pursuant to s. 47 of the *Residential Tenancy Act* (the “Act”). They also seek an order under s. 62 of the *Act* that the Landlord comply with the *Act*, Regulations, or tenancy agreement.

E.D. and R.S. appeared on their own behalf as Tenants. K.C. appeared as advocate for the Tenants. C.P. and B.P. appeared on their own behalf as Landlords. K.W. appeared as support for C.P. and provided no evidence during the hearing.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Landlords indicate that the Tenants were personally served with the One-Month Notice on October 27, 2021. The Tenants acknowledge receipt of the One-Month Notice on October 26, 2021. I find that the Landlords have served the Tenants with the One-Month Notice in accordance with s. 88 of the *Act* on October 26, 2021, which is the day the Tenants acknowledge receipt of the One-Month Notice.

The Tenants indicate that they served the Notice of Dispute Resolution and their initial evidence on the Landlords by way of registered mail sent on November 5, 2021. The Landlords acknowledge receipt of the Notice of Dispute Resolution and the initial evidence. I find that the Tenants served the Notice of Dispute Resolution and their initial evidence in accordance with s. 89 of the *Act*. Pursuant to s. 90, I deem the Landlords received the Notice of Dispute Resolution and initial evidence on November 10, 2021.

The Landlords indicate they served the Tenants with their responding evidence by way of email sent on December 6, 2021. The Tenants acknowledge receipt of the Landlords responding evidence. The parties confirmed that they consent to service by way of email. I find pursuant to s. 71(2) of the *Act* that the Landlords responding evidence was sufficiently served on the Tenants on December 6, 2021.

#### Preliminary Issue – Tenants' late evidence

The Tenants indicate that they served additional evidence on the Landlords by way of email sent on December 3, 2021. The evidence uploaded by the Tenants include several documents, which comprise of additional written submissions and photographs. The Landlords deny receiving the additional documents and only confirm receipt of the photographs on December 4, 2021.

I note that Rule 3.14 requires all applicants to serve their evidence as soon as possible and, in any event, no later than 14 days before the hearing. The Tenants have failed to serve their evidence as permitted under the Rules of Procedure.

I raised the issue of prejudice with the Landlords and they confirmed that the late service of the photographs did not impede their ability to respond to the Tenants evidence and that they were prepared to proceed with the hearing. Despite the Tenants failure to comply with the Rules of Procedure, I permit the inclusion of the Tenants late photographs based on the Landlords acknowledged receipt and their consent to proceed despite late service. The late written submissions, which the Landlords did not acknowledge receipt, are not admitted into the record.

I find pursuant to s 71(2) of the *Act* that the Tenants late photographs were sufficiently served on the Landlords by way of email received on December 4, 2021.

#### Preliminary Issue – Tenant's Claim

The Tenant seeks an order that the Landlord comply with the *Act*. Pursuant to Rule 2.3 I sever this aspect of the Tenant's claim on the basis that it is not sufficiently related to the primary issue of whether the tenancy will continue, or end based on the One-Month Notice. Further, this portion of the Tenants claim may not be relevant if the tenancy does end.

Accordingly, this portion of the Tenant's claim is dismissed. If the tenancy continues, it will be dismissed with leave to reapply. If the tenancy ends, it will be dismissed without leave to reapply on the basis that the tenancy is over.

Issue(s) to be Decided

- 1) Whether the One-Month Notice ought to be cancelled?
- 2) If it not, are the Landlords entitled to an order of possession?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

A written tenancy agreement was put into evidence by the Landlords. The tenancy agreement shows it was signed on September 8, 2021. The Landlords confirmed that the Tenants took occupation of the rental unit on September 28, 2021, which is earlier than the tenancy agreement anticipated. Rent of \$2,600.00 is due on the first day of each month. The Landlords confirmed that they hold a security deposit of \$1,300.00 and a pet damage deposit of \$1,300.00 in trust for the Tenants.

The tenancy agreement has an addendum, which includes a term that the shop area at the back of the property was not included as part of the rental.

The Landlords indicate that issues began with the Tenants shortly after they took occupation of the rental unit. B.P. says he attended the property to access the back shop area and witnessed the Tenants having a fire adjacent to the property. B.P. describes this fire as debris fire. The Tenants deny this and claim that the fire was for one of their children. They say the fire was in the area the Landlords had previously had a covered fire pit enclosure.

B.P. says that on October 9, 2021, he observed that the Tenants had taken down a section of the fence and the fence gate and had a truck parked in that area. The Landlords say the truck had driven over certain lawn features, which they say were shrub beds.

The Landlords claim that the Tenants have moved an excessive amount of materials onto the residential property. The residential property is a single-family detached home that appears to be in a suburban setting. The Landlords say that the Tenants had never told them before signing the tenancy agreement that they would be storing of industrial/commercial items at the residential property. The Landlords say that had they known that this was the Tenants expectations, they would never had rented the residential property to them. The Landlords indicate that they assumed the property would be used simply as a place to live, not the storage of industrial/commercial items.

The One-Month Notice, signed October 26, 2021, states that it was issued on the basis that the Tenants had put the Landlords property at significant risk and breached material terms of the tenancy agreement that were not corrected within a reasonable time after being given written notice to do so.

The written description of the One-Month Notice, filed in by the Landlords, states the following:

Tenant has failed to comply with material terms, have repeatedly shown a complete disregard for the landlord, their property and [Municipal] Bylaws and are making unreasonable use of a suburban property and causing damage/Liability and Safety concerns.

Tenant Insurance/failure to comply with Material Term and Caution Notice. Addendum to lease "I will purchase tenant insurance (proof to be provided prior to occupancy)". signed September 8/21. Tenant has not provided documentation after repeated promises and reminders. Tenant has not complied with Caution Notice delivered October 14/2021

October 9 to October 23/2021 Construction Noise complaint/failure to comply with [Municipal] Bylaws Caution Notice delivered October 14/21. Landlord received third complaint regarding excessive noise created by tenant breaching [Municipal] bylaw

Unreasonable use of a Property/Failure to comply with Caution Notice/ Safety Concerns/ Property Damage

October 3 to October 26/21 Without discussion or landlord approval, tenants are storing large amounts of heavy industrial/commercial equipment in a suburban area, raising safety and liability concerns as much of the content is large and

heave and cannot be determined as It is covered by tarps or other equipment.  
Garden damage/fence removal by tenant  
Caution Noticed delivered October 14/21. Tenant has not complied.

I have removed identifying information to anonymize the above passage.

The Landlords written submissions detail various damage to the property, including destruction to a garden bed and vine, broken tree limbs, destruction of a honeysuckle bush, tire marks on the lawn, trailers wedged tightly into an easement area of the property, a burned stump, and damage to the front lawn due to vehicles being parked onto the lawn.

The Landlords submit a series of photographs which they say show damage to the lawn, the fence, trees, and the area where the Tenants had a fire on October 9, 2021.

With respect to the claimed breaches of the tenancy agreement, the Landlords highlight two clauses from the addendum which state that no smoking was permitted and that the Tenants were to provide proof of tenant's insurance before the tenancy began, clauses 2 and 9 respectively. The Landlords argue that these terms were material to the tenancy agreement and that Tenants breached both terms. The Landlords say they have no issue with the Tenants smoking outside the rental unit but indicate they found cigarette butts inside the garage, which they say proves the breach of the material term.

The One-Month Notice mentions a warning of October 14, 2021. However, the Landlords have not submitted a copy of this these warnings into evidence. The Tenants have included various caution notices from the Landlord dated October 14, 2021 and signed by C.P.. The notice from the Landlord on October 14, 2021 set deadlines to remove the vehicles from the lawn (October 22, 2021), that the industrial/commercial materials removed from the residential property (October 31, 2021), that the Tenants immediately comply with noise restrictions, stop smoking within the rental unit, and that they no longer have fires at the residential property.

The Landlords also mention a shed structure erected by the Tenants. The Landlords argue that it is of a significant nature requiring permits and that they did not permit the Tenants to erect the structure before doing so. They say the structure was built without permits from the municipality. The Landlords also take issue with a Christmas light display put up by the Tenants. Photographs show the Christmas display to be a structure running along the roof's ridgeline.

The Landlords also mention that they have received notice of noise complaints from neighbouring property owners. Finally, the Landlords indicate that the Tenants have removed the fire detector from within the rental unit.

In response, the Tenants say the structure they erected is not attached to the residential property, is not permanent, and can be taken down. It comprises of a shelving unit with a roof. The Tenants argue there is nothing in the tenancy agreement restricting their installation of the structure on the residential property. They further indicate that they have had municipal inspectors attend the residential property and confirm that no permit is required for the structure.

R.S. confirms that he did take down the fence in October as described by the Landlord but did so to make it easier to access the residential property for moving into the rental unit. R.S. says the fence has since been reinstalled. R.S. advises that he is a carpenter.

R.S. confirms that he does smoke but denies smoking within the rental unit. He says that he puts his cigarette butts into his back pocket and that the butts discovered by the Landlords in the garage may have fallen out of his pocket on that occasion.

With respect to the noise complaints, the Tenants say they have not been charged with any noise complaint from the municipality. They acknowledge installing Christmas decorations at the beginning of December 2021 and deny that it compromises the building envelope or otherwise damages to the roof. During the hearing, the Tenants offered to have the Landlords inspect the Christmas light display.

The Tenants confirm that they have renter's insurance effective on October 28, 2021 and submit proof of their insurance into record, which was included in the original evidence package.

### Analysis

The Tenants apply to cancel the One-Month Notice.

Pursuant to s. 47 of the *Act*, a landlord may end a tenancy for cause and serve a notice to end tenancy on the tenant effective no sooner than one month after it is received by the tenant. Under the present circumstances, the Landlord issued the One-Month Notice pursuant to the following:

- s. 47(1)(d)(i) – Putting the Landlord's property at significant risk.

- s. 47(1)(h) – The Tenant breached a material term of the tenancy agreement and failed to correct it within a reasonable period of time after being given written notice to do so by the Landlords.

The onus of showing the notice is enforceable rests with the Landlord.

Policy Guideline #1 provides guidance with respect to the rights and responsibilities of landlords and tenants under the *Act*. I reproduce the following passages that are relevant to this dispute:

### **RENOVATIONS AND CHANGES TO RENTAL UNIT**

1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.
2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

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### **PROPERTY MAINTENANCE**

1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.
2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.
3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

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### **FENCES AND FIXTURES**

A fixture is defined as a “thing which, although originally a movable chattel, is by reason of its annexation to, or association in use with land, regarded as a part of the land”.

For the purposes of determining whether chattels annexed to realty remain personal property or become realty, chattels are divided into two classes:

1. Chattels, such as brick, stone and plaster placed on the walls of a building, become realty after annexation. In other words, where personal property does not retain its original character after it is annexed to the realty or becomes an integral part of the realty, or is immovable without practically destroying the personal property, or if all or a part of it is essential to support the structure to which it is attached then it is a fixture.
2. Other personal property, that does not lose its original character after attachment may continue to be personal property, if the owner of the personal property and the landowner agree.

Fixtures that have been considered tenant's fixtures are:

- Trade fixtures - where the tenant has attached them for the purposes of his trade or business.
  - Ornamental and domestic fixtures which are whole and complete in themselves and which can be removed without substantial injury to the building. Examples of a chattel which can be moved intact and are more likely to be considered a tenant's fixture are blinds and a gas stove.
3. The landlord is responsible for maintaining fences or other fixtures erected by him or her.
  4. The tenant must obtain the consent of the landlord prior to erecting fixtures, including a fence.
  5. Where a fence, or other fixture, is erected by the tenant for his or her benefit, unless there is an agreement to the contrary, the tenant is responsible for the maintenance of the fence or other fixture.
  6. If, at the end of the tenancy, the tenant removes the fixture erected by him or her, he or she is responsible for repairing any damage caused to the premises or property.

Dealing first with the Landlords claim that the Tenant is putting their property at significant risk, I am not satisfied that the Landlords have discharged their evidentiary burden. The Landlords provided significant submissions on the extent of the damage to the property they say was caused by the Tenants, including an unauthorized fire, taking down a fence, and damage to the residential property's landscaping. The Landlords say



their lawn and shrub beds were damaged, though the extent of the damage is unclear to me based on their submissions and their documentary evidence.

However, the Tenants have submitted photographs of the exterior of the residential property, which show the property to be in a reasonable state of repair. If there was any damage to the surrounding landscaping, it appears to have been repaired. I accept the Tenant's evidence that the fence was taken down temporarily and has been repaired.

Section 32 of the *Act* imposes two related obligations on a tenant:

- 1) The tenant must maintain the rental unit; and
- 2) The tenant must repair any damage to the rental unit caused by their actions or their neglect.

The obligation to repair damages they cause or neglect does not extend to reasonable wear and tear. The Landlords presently appear to have an expectation that the rental unit be maintained in the exact state the Tenants received it at the beginning of the tenancy. As Policy Guideline #1 makes clear, that is not the expectation imposed by the *Act*. If any alterations are made, the Tenants have an obligation to repair them and the Landlords can claim for damages to revert it back to its original state once the tenancy ends. That claim for damages does not extend to reasonable wear and tear, which is to be expected in all tenancies.

The Tenants have the right to the quiet enjoyment of the rental unit as provided by the tenancy agreement and s. 28 of the *Act*. This includes the right to occupy the rental unit and to its reasonable use during the tenancy. The Tenants are permitted to store their personal items at the residential property. The Tenants are permitted to decorate the residential property for the holidays. Neither of these are explicitly forbidden by the tenancy agreement. The photographs provided by the Tenant do not show any unreasonable use of the property and the property appears to be reasonably well kept and maintained.

The Landlords argue that they did not permit the erection of the Tenants structure and highlight that Policy Guideline #1 does not permit the Tenants to put up fixtures without their consent. This aspect is not specifically mentioned in the One-Month Notice and cannot form the basis for ending the tenancy. However, I take time to address the Landlords claim for the purpose of providing certainty on this point. *Black's Law Dictionary* (6<sup>th</sup> edition) defines a fixture as "An article in the nature of personal property which has been so annexed to the realty that it is regarded as a part of the real property...That which is fixed or attached to something permanently as an appendage,

and not removable.” I accept the Tenants evidence that the structure is removeable. The photographs provided by the Landlords and Tenants show a temporary structure. I find that the structure is not a fixture and is a mere chattel. The tenancy agreement does not prohibit the Tenants from erecting the structure in any event.

Certainly, the structure and the storage of “commercial/industrial” goods may be unsightly but baring proof of damage or proof that they pose a significant risk to the Landlord’s property, they cannot form the basis of ending the tenancy.

Accordingly, I find that the Landlords have failed to establish that the Tenants are placing the property under significant risk.

Finally, the Landlords allege that the Tenants have breached two terms of the tenancy agreement, in particular addendum clauses 2 and 9 which relate to smoking and renter’s insurance. Pursuant to s. 47(1)(h) of the *Act*, the Landlords must show that the Tenants failed to comply with a material term, that they gave written notice of the breach to the Tenants, and that the Tenants failed to correct their actions. Essentially, these types of breaches are intended to form cause for ending a tenancy where the tenant has breached a material term, been notified of the same, and continues to act in breach.

The first aspect of the Landlords case, that of renters insurance, I find that the Tenants have obtained renters insurance on October 28, 2021, which is a reasonable time after being notified of the breach by the Landlords. Proof of the same was put into evidence by the Tenants. I need not consider whether clause 9 is material as the Tenants have complied with the term within a reasonable period of time after being notified of the breach by the Landlord. Accordingly, the Landlords have failed to show that the Tenants are in continued breach of clause 9 despite written warnings.

With respect to the allegations of smoking within the rental unit, the Landlords have failed to show that the Tenants are smoking within the rental unit. I accept the Tenants evidence that he smokes and that he smokes outside on the residential property. I further accept that the cigarette butts found within the garage had fallen out the Tenant’s pocket as he describes. I make no findings on whether the term is material and need not do so as the Landlords have failed to demonstrate that there is a breach of clause 2. Accordingly, I find that the Tenants have not breached this aspect of the tenancy agreement.

I further note that Landlords complain of the Tenant causing noise that is disturbing the neighbourhood. Noise may constitute an unreasonable disturbance for occupants and/or the landlord of the residential property (see s. 47(1)(d)(i)). However, this is not listed as the cause under the One-Month Notice and is simply described by the Landlords in their written portions. As it is not properly checked off, it cannot form a basis for ending the tenancy. I would further note that the *Act* protects the rights and enforces the obligations of landlords and tenants in residential tenancies. It does not protect the rights of third-party property owners adjacent to the residential property. If the Tenants are causing noise complaints, that is an issue between the Tenants and their neighbours. The Landlords cannot use municipal noise complaints raised by third-party property owners as a pretext for ending the tenancy.

As the Landlords have failed to demonstrate that the causes listed within the One-Month Notice exist, I hereby grant the relief sought by the Tenants and cancel the One-Month Notice. The tenancy shall continue until it is ended in accordance with the *Act*.

### Conclusion

Pursuant to s. 47 of the *Act*, the One-Month Notice is hereby cancelled and shall not be enforced. The tenancy shall continue until it is ended in accordance with the *Act*. As the tenancy continues, the Tenants claim that the Landlords comply with the *Act* is dismissed with leave to reapply.

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: December 15, 2021

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Residential Tenancy Branch