



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      Tenants:      **CNC, FFT**  
Landlords:      **OPC, MNDL-S, FFL**

### Introduction

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

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") under Sections 47 and 67 of the Act; and,
2. Recovery of the application filing fee under Section 72 of the Act.

This hearing also dealt with the Landlords' application pursuant to the Act for:

1. An Order of Possession for the One Month Notice under Sections 47, 55 and 62 of the Act;
2. A Monetary Order for the Tenants to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit under Sections 38 and 67 of the Act; and,
3. Recovery of the application filing fee under Section 72 of the Act.

The hearing was conducted via teleconference. One Landlord, her two witnesses, CM and IF, and one Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlords' One Month Notice served by registered mail on December 20, 2022, Canada Post Tracking Number on cover sheet of decision, the Tenant confirmed receipt, deemed served on December 25, 2022;
- the Tenants' Notice of Dispute Resolution Proceeding package and evidence served by registered mail on January 9, 2023, Canada Post Tracking Number on cover sheet of decision, the Landlords confirmed receipt, deemed served on January 14, 2023; and,
- the Landlords' evidence package personally served, the Tenant confirmed receipt, sufficiently served on January 25, 2023.

Pursuant to Sections 71(2)(b), 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

### Issues to be Decided

Tenants:

1. Are the Tenants entitled to cancellation of the Landlord's One Month Notice?
2. Are the Tenants entitled to recovery of the application filing fee?

Landlords:

1. Are the Landlords entitled to an Order of Possession for the One Month Notice?
2. Are the Landlords entitled to a Monetary Order for the Tenants to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit?
3. Are the Landlords entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on May 1, 2021. The fixed term ended on May 1, 2022, then the tenancy continued on a month-to-month basis. Monthly rent is \$2,500.00 payable on the first day of each month. A security

deposit of \$1,250.00 was collected at the start of the tenancy and is still held by the Landlords.

The One Month Notice stated the reason the Landlords were ending the tenancy was because the Tenants have put the landlord's property at significant risk; the Tenants or a person permitted on the property by the Tenants have caused extraordinary damage to the unit or property; and, the Tenants have not done required repairs of damage to the unit or property. The effective date of the One Month Notice was January 25, 2023.

The Landlords provided further details of the causes to end this tenancy as:

*Tenant has caused significant damage to the unit and has not kept the unit in a clean and orderly manner [sic] according to strata bylaws. This was noted during an inspection on November 20, 2022. A letter to the tenant was delivered via registered [sic] mail to clean the unit and repair certain safety related issues they had caused.*

*During the follow up inspection on December 10, 2022 it was noted that many items were not done and it was further discovered one of the tenants children were smoking in the unit and putting out the cigarettes on the wall. A warning letter was issued on December 10 for the smoking along with another demand letter to clean and repair the items not completed.*

*On December 17, 2022 during the follow up inspection from the demand letter, it was noted that the unit was still in disrepair and there were still signs of smoking in the room and repairs not completed.*

The Landlords testified that the rental unit was damaged and unclean. They uploaded picture evidence attesting to the state of the rental unit. After the issuance of two demand letters, one on November 26, 2022, and the second on December 10, 2022, the state of the rental unit, although improved from the November inspection, still has outstanding items that need to be attended. The Landlords have not done any further inspections of the rental unit.

The Landlords pointed to evidence of one of the occupants smoking in the rental unit and that person putting their cigarettes out using the wall in the bedroom to the right at the top of the stairs. The Landlords asserted that all the damage caused by the occupant extinguishing their cigarettes on the wall needs to be repaired by the Tenants.

The Landlords put the residential property up for sale. The Landlords' witnesses gave testimony about the common negative comments from people viewing the property about the state of the rental unit, such as the significant damage to the walls, the musty smells from the basement, and the seemingly unhealthy environment inside the property.

The property has sold, and it closes on June 30, 2023. The Landlords testified that the repairs are still not completed. The Tenants said they received a Two Month Notice on April 24, 2023, which is effective on June 30, 2023. The new purchasers seek vacant possession of the rental unit.

One Tenant's verbal evidence centered around not getting sufficient notice or not getting any notice when the real estate people were coming by to show the property. The Tenant confirmed that sometimes the rental unit was not up to a sufficient cleanliness par.

The Tenants thought they had uploaded their own pictures of the rental unit, but they could not be found. I reviewed the Tenants' application evidence and the Landlords' application evidence. There is none. The Tenant said she uploaded similar pictures as the Landlords, which included her one daughter's room, and a picture of a hole or the missing granite countertop in the kitchen.

The Tenants agreed that her daughter was putting her cigarettes out on the wall, and this was not acceptable. Her daughter had been experiencing some mental health challenges, but the Tenants said that that behaviour has stopped.

The Tenants testified that the stairs railing is repaired, and the small section of gouges on the wall have been puttied over, but not painted yet.

The Landlords seeks an Order of Possession and want compensation for the repairs needed in the unit.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute

a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

The Landlords' One Month Notice was deemed served on the Tenants on December 25, 2022. I find the Landlords' One Month Notice complied with the form and content requirements of Section 52 of the Act. Pursuant to Section 47(4), the Tenants applied for dispute resolution on January 2, 2023 within 10 days after the date the Tenants received the One Month Notice.

### ***Landlord and tenant obligations to repair and maintain***

**32** ...

- (2) *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.*

Section 32(2) of the Act sets out the Tenants' responsibility during their tenancy. The Landlords provided evidence of an unreasonably clean rental unit, mostly in the daughter's bedroom, and the basement floor. They also pointed out behaviours that caused damage to the rental unit and were items of concern for the Landlords, e.g. the Tenant's daughter extinguishing her cigarettes on her bedroom wall. I find the Landlords have proven on a balance of probabilities that the Tenants have caused extraordinary damage in the daughter's bedroom, and they have not repaired this damage in a reasonable amount of time pursuant to Section 47(f) and 47(g) of the Act. I uphold the Landlords' One Month Notice.

I must consider if the Landlords are entitled to an Order of Possession. Section 55 of the Act states:

### ***Order of possession for the landlord***

- 55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*
- (a) *the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*

- (b) *the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

The Landlords' One Month Notice complied with Section 52 of the Act, and I uphold the Landlords' notice.

The Landlords have not completed the repairs they say are needed to be done, and I find their monetary order claim to be premature, as they cannot prove the amount of, or value of the damage or loss experienced. I dismiss the Landlords' claim for the Tenants to pay to repair the damage to the rental unit with leave to re-apply.

I grant the Landlords an Order of Possession under Section 55(1) of the Act which will be effective two days after service on the Tenants.

The Tenants' claim to cancel the One Month Notice is dismissed, and as the Tenants were not successful in their claim, I do not grant them recovery of the application filing fee.

As the Landlords are successful in their claim, they are entitled to recovery of the application filing fee. The Landlords may, under Section 72(2)(b) of the Act, withhold \$100.00 from the Tenants' security deposit held by the Landlords.

### Conclusion

The Tenants' application to cancel the One Month Notice is dismissed.

The Landlords' One Month Notice is upheld, and I grant an Order of Possession to the Landlords effective not later than two (2) days after service of this Order upon the Tenants. The Landlords must serve this Order on the Tenants as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlords may retain \$100.00 from the Tenants' security deposit to compensate the Landlords' for payment of the application filing fee.

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: May 31, 2023

---

Residential Tenancy Branch