



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT

### Introduction

On January 21, 2019, the Tenants filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a One-Month to End Tenancy for Cause, (the “Notice”) issued on January 13, 2019, and to recover the filing fee for this application. The matter was set for a conference call.

The Tenants and the Landlords attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and Landlords were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

- Should the Notice issued on January 13, 2019, be cancelled?
- If not, are the Landlords entitled to an order of possession?
- Are the Tenants entitled to the recovery of the filing fee for this application?

### Background and Evidence

The agreed upon testimony of the parties is that a new tenancy agreement had been signed for this tenancy, on June 4, 2018. The tenancy agreement stated that the tenancy started on June 1, 2018, as a month to month tenancy, that rent in the amount of \$1,200.00, was due on the first day of each month, and that the Tenants had paid a \$600.00 security deposit and a \$600.00 pet damage deposit. The Tenant provided a copy of the tenancy agreement into documentary evidence.

The Landlord's testified that they served the Tenants with the Notice to end tenancy to on January 13, 2019, by posting it to the front gate of the rental property. The Tenant provided a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so.*

The Landlords' testified that they had entered the rental unit on January 8, 2018, to inspect the property. The Landlords testified that when they entered the rental unit, they discovered that the Tenants had painted without their permission and that the floors were covered in drywall dust.

The Landlords testified that they had verbally communicated to the Tenants that they were not happy with the painting, and the condition of the rental unit. The Landlords testified that they had advised the Tenants to stop painting.

The Landlords' testified that they had entered the rental unit, again, on January 13, 2018, to inspect the property, looking at the flooring and the countertops for insurance purposes. The Landlords testified that when they entered the rental unit, they discovered that the Tenants were still painting. The Landlords testified that they feel the

Tenants breach a material term of their tenancy and had disrespected their rights as Landlords, so they issued the Notice to End Tenancy.

When asked the Landlords testified that they had communicated with the Tenants by email and phone calls and that they had not served the Tenants with a written warning of the breach before they issued the Notice to End Tenancy.

The Landlord argued that their emails, text messages and phone calls should be sufficient warning and that they should be excepted as the required written warning of the breach of the tenancy agreement by the Tenants, to end the tenancy.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenants received the Notice to End Tenancy on January 16, 2019, three days after it was posted to the front gate of the rental property. Pursuant to section 47 of the *Act*, the Tenant had ten days to dispute the Notice. I find the Tenants had until January 26, 2019, to file their application to dispute the Notice. The Tenants filed their application on January 21, 2019, within the statutory time limit.

I accept the testimony of the Landlords that they had sent emails and verbally communicated with the Tenant regarding their displeasure with the Tenants painting the rental unit and the overall condition of the rental unit during their inspections. I acknowledge that the Landlords believe that their emails and phone calls were adequate warnings of a breach of the material term of the tenancy, sufficient to end the tenancy. However, section 88 of the *Act* sets the conditions in which written documentation must be served. The *Act* states the following:

#### **How to give or serve documents generally**

**88** All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

I find that the Landlords have not provided, the required, written warning to the Tenant of a breach of a material term of their tenancy agreement, in accordance with section 47 of the *Act*. In that in the absence of a written warning, served in an approved method, I find that the Landlords have not met the required conditions to end this tenancy pursuant to section 47 of the *Act*.

Conclusively, I find that the Landlords have not proven cause sufficient cause to terminate the tenancy for the reason given on the Notice issued. Therefore, I grant the Tenants' application to cancel the Notice issued on January 13, 2019, and I find the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the *Act*.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application to dispute the Notice, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application. The Tenants are allowed to take a one-time deduction of \$100.00, from their next month's rent.

Conclusion

The Tenants' application to cancel the Notice is granted, issued January 13, 2019. The tenancy will continue until legally ended in accordance with the Act.

I grant the Tenants permission to take a one-time deduction of \$100.00, from their next month's rent

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: March 4, 2019

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Residential Tenancy Branch