



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, OLC

### Introduction

On March 2, 2020, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking an Order to comply pursuant to Section 62 of the *Act*.

Both the Tenant and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing and evidence package by registered mail on March 12, 2020. The Landlord confirmed that this package was received on April 22, 2020 as she was only able to return to her property then due to the pandemic. However, she stated that she took no issue with receiving this package when she did. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package.

The Landlord advised that she served her evidence by email to the Tenants on April 23, 2020. The Tenant confirmed that she received this evidence, that she had reviewed it, and that she was prepared to respond to it. As such, I have accepted this evidence and will consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to an Order to comply?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started when the Landlord assumed control of the property after a sale on October 13, 2017. The Landlord stated that rent is currently established at \$1,025.00 per month and is due on the first day of each month; however, the Tenant stated that rent was actually \$1,050.00 per month. They agreed that a security deposit of \$450.00 was also paid.

The Landlord advised that the Notice was served to the Tenants by registered mail on February 18, 2020 and the Tenant confirmed that they received this Notice on February 24, 2020. The reasons the Landlord served the Notice are because the “Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, put the landlord’s property at significant risk”, and because the “Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.” The Notice indicated that the effective end date of the tenancy was March 31, 2020.

The Landlord advised that she listed her property for sale and her realtor had coordinated showings of the rental unit; however, she had received feedback that the Tenants had an aggressive dog that was hindering the Landlord’s attempts to successfully show the rental unit. She stated that the dog would lunge and bark aggressively at every showing. As the Landlord was worried about this liability, she stated that the realtor texted the Tenants about this issue; however, she was not sure when this was done, but possibly at the beginning of February 2020. She stated that the Tenants said they would be unable to accommodate the Landlord by having the dog out of the rental unit for every showing. She advised that Tenant D.B. would have to hold the intimidating dog back during showings. She referenced the documentary evidence submitted to support that the dog was an issue.

The Tenant advised that their dog is big and is not aggressive, but hyper. The dog would bark but would not lunge at any prospective buyers as it was usually kept in another room in the presence of D.B. She stated that the realtor saw the dog one day through the window and commented that she was afraid of dogs. She advised that they

never received any warning letters about the dog being an issue prior to receiving the Notice. However, they received a text on February 20, 2020 about having the dog out of the rental unit during showings. She stated that she could not make any promises as the number of showings was quite frequent, but they have managed to take the dog out of the rental unit for every showing since the text message. She referenced letters from neighbours submitted as documentary evidence confirming that the dog is not an issue.

The Landlord advised that it was her understanding that there was ongoing dialogue between the Tenants and prospective buyers of the rental unit where the Tenants would point out negative aspects and hinder the potential sale. She stated that the Tenants told a prospective buyer that there was an issue with flooding; however, this was never the case. She referenced a recorded audio clip which she stated supports that there has never been a flood of the rental unit. As well, she has received negative feedback from prospective buyers regarding comments that the Tenants made during showings, and she cited documentary evidence of such on January 25, 29, and 30, 2020. She stated that her realtor warned the Tenants not to converse with prospective buyers, but she is not sure when the realtor warned them. She stated that she had more negative feedback about the Tenants' continued behaviour after this warning; however, she did not have time to submit this evidence and she was unable to get anything in writing even though she requested it.

The Tenant advised that a prospective buyer asked if water ever came up to the property and she simply advised this person that the water came up to within a foot of the shop on the property. She was then contacted by the realtor and explained that she simply answered the buyer's question. Regarding other showings, she stated that they routinely answered questions that the prospective buyers would ask but they would be honest, without any intention to intentionally provide negative information. She confirmed that the realtor texted them on January 31, 2020 warning them to no longer speak to prospective buyers or other realtors, and since that time, they have not said anything to anyone else. However, she did confirm that she was talking to a friend of hers outside one time about her upcoming Dispute Resolution proceeding and a prospective buyer may have overheard this conversation.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

***Landlord's notice: cause***

**47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

*(d) the tenant or a person permitted on the residential property by the tenant has*

*(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*

*(iii) put the landlord's property at significant risk;*

*(j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;*

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As such, the onus is on the party issuing the Notice to substantiate the validity of the reason for service of the Notice.

With respect to the reasons on the Notice, if the Landlord believes that the Tenants are behaving in a manner that is detrimental to the tenancy, the Landlord should warn the Tenants in writing so that the Tenants are aware that there is a problem and would then have an opportunity to correct the issues. While the Landlord believes that the Tenants have engaged in actions that have been detrimental to the sale of the rental unit, the Landlord is unsure of if or when the Tenants were advised that any of their actions were a problem. Furthermore, the Tenant confirmed that after being warned by the realtor on January 31, 2020, there have been no issues since.

As the onus is on the Landlord to prove that the Tenants acted in a manner to warrant service of the Notice, I find that the Landlord has provided insufficient testimony to support that any of the alleged problems occurred after the Tenants were warned that their actions could be detrimental to the sale of the rental unit.

As such, I find that the Landlord has provided little persuasive evidence that the purported actions of the Tenants would constitute a serious jeopardization to the health or safety or a lawful right or interest of the Landlord, that it put the Landlord's property at significant risk, or that they knowingly gave false information about the residential property to a prospective purchaser viewing the residential property. Consequently, I do not find that the Landlord has submitted sufficient evidence to substantiate service of the Notice upon the Tenants.

Ultimately, I am not satisfied of the validity of the Notice and I find that the Notice is cancelled and of no force and effect.

Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of February 18, 2020 to be cancelled and of no force or effect.

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: May 7, 2020

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Residential Tenancy Branch