



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, RP, DRI, OLC

### Introduction

This hearing dealt with the Application for Dispute Resolution filed by the Tenants on July 6, 2020, under the Residential Tenancy Act (the “Act”), to cancel a One-Month to End Tenancy for Cause, (the “Notice”) dated June 30, 2020, to dispute a rent increase, for an order to repair the rental unit, and for an order the Landlord to comply with the Act, regulation and/or the tenancy agreement. The matter was set for a conference call.

Both Landlords and one of the Tenants with their Advocate attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant 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.

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.

### Preliminary Matters- Related Issues

I have reviewed the Tenants’ application, and I note that the Tenants have applied to cancel a Notice to end tenancy as well as for several other issues. I find that some of these other issues are not related to the Tenants’ request to cancel the Notice. As these matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply, the Tenants' claims to dispute a rent increase, for an order to repair the rental unit, and for an order the Landlord to comply with the Act, regulation and/or the tenancy agreement.

I will proceed with this hearing on the Tenants' claim to cancel the One-Month Notice.

#### Issues to be Decided

- Should the Notice dated June 30, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?

#### Background and Evidence

I acknowledge that there were many issues brought forth related to the tenancy during the hearing. Although I have reviewed all of the evidence and testimony submitted during the hearing, only the evidence and testimony relevant to the issue and my finding in this matter are described in this decision.

The Landlord testified that they served the Notice to end tenancy to the Tenants on June 29, 2020, by personally serving it to the Tenants. The Tenant testified that the notice was served to them on June 30, 2020. The Landlords and the Tenants each provided a copy of the Notice into documentary evidence.

The reason checked off within the Notice are as follows:

- The Tenant has allowed an unreasonable number of occupants in the unit/suite/property/park
- Tenant or a person permitted on the property by the tenant has:
  - *significantly interfered with or unreasonably disturbed another occupant or the landlord.*
  - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*
  - *put the landlord's property at significant risk.*

- *Tenant or person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to:*
  - *Damage the landlord's property.*
  - *adversely affected the quiet enjoyment, security, safety, or physical well-being of another occupant or the landlord.*
  - *jeopardize a lawful right or interest of another occupant or the landlord.*
- *Tenant or person permitted on the property by the tenant has caused extraordinary damage to the unit/site property/park.*
- *Tenant knowing gave false information to a prospective tenant or purchaser of the rental unit/suite or property/park.*
- *Rental unit/suite must be vacated to comply with a government order.*

The Notice states that the Tenant must move out of the rental unit by July 30, 2020. The Notice informed the Tenants of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenants that if an application to dispute the Notice is not filed within 10 days, the Tenants are presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlords testified that they had seen the Tenants' brother as well as other kids in the rental unit and that they believe that this was too many people in the rental unit. When asked by this Arbitrator, if the brother and the other kids were living in the rental unit or just visiting, the Landlord testified that they did not know. The Landlords testified that there should only be four people living in the rental unit, the two Tenants and their two children.

The Tenant testified that their two children and themselves were the only ones living in the rental unit.

The Landlords testified that the Tenants had left items outside of the rental unit and that they had received a warning letter from the strata that leaving things outside of the unit was a breach of the strata rules. The Landlords testified that they had verbally notified the Tenants of this breach of the strata rules.

The Tenant testified that the materials left outside of the rental unit had been from the bathroom repair job and that those items had been left there by the Landlords' repair person, not the Tenants.

The Landlord testified that the Tenants had placed a plastic covers over the windows of the rental unit and that the covers were causing mould to form and damaging the rental

unit. When asked by this Arbitrator, now the Landlord had advised the Tenants that the window coverings were causing damage to the rental unit, the Landlords answered that they had notified the Tenants of this in their documentary evidence for this proceeding.

The Tenant agreed that they had put up additional coverings over the windows as the ones provided with the tenancy did not cover the full window, nor did they provide an adequate reflection of the sun's heat, coming through the windows. The Tenant testified that they had requested additional window covering from the Landlord, that the Landlord had agreed to provide them but never did, so they had purchased their own.

The Landlords were asked by this Arbitrator to provide details of the illegal activity, claimed on the Landlords' notice to end tenancy. The Landlord responded that there was no illegal activity taking place in the rental unit. The Landlord provided no explanation as to why they had included this reason on their notice to end a tenancy.

The Landlords testified that on May 29, 2020, the Tenants had reported a water leak in the bathroom of the rental unit. The Landlord testified that when their repair person investigated the leak, a severe problem was found that required a full renovation/repair of the bathroom in the rental unit costing thousand dollars. The Landlords' testified that the Tenants' children had repeatedly tightened the water control taps too far, which caused the tap to fail and start to leak.

The Tenant testified that they did not damage the taps.

The Landlord was asked by this Arbitrator to provide details of the false information the Tenants provided to a prospective tenant or purchaser of the rental unit. The Landlord responded that the Tenants had not provided false information to a prospective tenant or purchaser of the rental unit. The Landlord provided no explanation as to why they had included this reason on their notice to end tenancy.

The Landlord was asked by this Arbitrator to provide details of the government order they received, requiring them to end this tenancy. The Landlord responded that they had not received a government order to shut down the rental unit. The Landlord stated that they had included this reason on their notice to end tenancy as they thought the order of possession, they would receive from this hearing was a government order.

## Analysis

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

I have reviewed the notice to end tenancy issued by the Landlords, and I find that the Tenants received the Notice on June 30, 2020. Pursuant to section 47 of the *Act*, the Tenants had ten days to dispute the Notice. I find the Tenants had until July 10, 2020, to file their application to dispute the Notice. The Tenants filed her application on July 6, 2018, within the statutory time limit.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires 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. In the case before me, the Landlord has the burden of proving that the Tenants' actions warrant the end of their tenancy.

The Landlord indicated six reasons on the Notice as the cause for her ending the Tenants' tenancy; I will address each one individually:

1) The Tenant has allowed an unreasonable number of occupants in the unit/suite/property/park

After reviewing the Landlords' testimony and documentary evidence, I find that the Landlords have not provided sufficient documentary evidence, to satisfy me, that the Tenants had allowed an unreasonable number of occupants in the rental unit.

Therefore, I find that their notice fails on this point.

The Landlords were informed, during these proceedings, of the difference between guests and occupants and advised that the *Act* did not allow them to limit the number of guests the Tenants have in the rental unit.

2) The Tenant or person permitted on the property by the tenant has:

- i. significantly interfered with or unreasonably disturbed another occupant or the landlord.
- ii. seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

- iii. put the landlord's property at significant risk.

I have reviewed the Landlords' testimony and documentary evidence, and I find that the Landlord has not provided sufficient evidence, to satisfy me, that the Tenants had significantly interfered with or unreasonably disturbed another occupant or the landlord, nor had they seriously jeopardized the health or safety or lawful right of another occupant or the Landlord or put the landlord's property at significant risk during this tenancy.

Therefore, I find that the Landlords' notice fails on this point.

3) The Tenant or person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:

- i. damaged the landlord's property.
- ii. adversely affected the quiet enjoyment, security, safety, or physical well-being of another occupant or the landlord.
- iii. jeopardize a lawful right or interest of another occupant or the landlord.

I accept the Landlords' testimony that the Tenants have not engaged in illegal activity on the rental property. Therefore, I find that the Landlords' notice fails on this point.

4) Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit/suite or property/park.

I have reviewed the totality of the Landlords' testimony and documentary evidence, and I find that the Landlord has not provided sufficient evidence, to satisfy me, that the Tenants damaged the rental unit in any way during this tenancy. Therefore, I find that the Landlords' notice fails on this point.

5) Tenant knowing gave false information to a prospective tenant or purchaser of the rental unit/suite or property/park.

I accept the Landlords' testimony that the Tenants did not give false information to a prospective tenant or purchaser of the rental unit. Therefore, I find that the Landlords' notice fails on this point.

6) Rental unit/suite must be vacated to comply with a government order.

I accept the Landlords' testimony that they have not received a government order to shut down the rental unit. Therefore, I find that the Landlords' notice fails on this point.

Overall, I find that the Landlords have not proven cause sufficient to terminate the tenancy for any of six reasons given on the Notice they issued. Therefore, I must allow the Tenants' application to cancel the Notice.

I find the Notice dated June 30, 2020, of no effect, and the tenancy continues until it is ended in accordance with the *Act*.

Conclusion

I grant the Tenant's application, and I find the Notice dated June 30, 2020, of no effect under the *Act*. This tenancy will continue until legally ended in accordance with the *Act*.

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: July 31, 2020

---

Residential Tenancy Branch