# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes **CNC FFT**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution ("Application") filed by the Tenants pursuant to the *Residential Tenancy Act* (the "Act") in which the Tenants seek:

- an order cancelling a One Month Notice to End Tenancy for Cause dated July 15, 2022 ("1 Month Notice") pursuant to section 47; and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72.

The Landlord and one of the two Tenants ("JH") attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

JH stated the Tenants served the Notice of Dispute Resolution and some of their evidence ("NDRP Package") on the Landlord by registered mail on August 12, 2022. JH provided the Canada Post tracking number for service of the NDRP Package on the Landlord to corroborate his testimony. I find the Landlord was served with the NDRP Package in accordance with the provisions of sections 88 and 89 of the Act.

JH stated the Tenants served additional evidence on the Landlord by Xpresspost on November 25, 2022. JH provided the Canada Post tracking number for service of the Tenants' additional evidence on the Landlord by Xpresspost to corroborate his testimony. I find the Landlord was served with the Tenants' additional evidence in accordance with the provisions of section 88 of the Act.

The Landlord stated he served his evidence on the Tenants by Registered Mail on November 15, 2022. The Landlord provided the Canada Post tracking number for service of his evidence on the Tenants to corroborate his testimony. I find the Tenants were served with the Landlord's evidence in accordance with section 88 of the Act.

Issues to be Decided

- Are the Tenants entitled to cancellation of the 1 Month Notice?
- Are the Tenants entitled to recover the filing fee for the Application from the Landlord?
- If the Tenants are not entitled to cancellation of the 1 Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the Application and my findings are set out below.

The Landlord submitted into evidence a copy of the tenancy agreement ("Tenancy Agreement") dated January 25, 2019. The Tenancy Agreement states the tenancy commenced on February 1, 2019, for a fixed term ending January 31, 2020, with rent of $2,700.00 payable on the 1st day of each month. The Tenants were to pay a security deposit of $1,350.00 and a pet damage deposit of $1,350.0 by March 31, 2019. The parties agreed the rent is currently $2,700.00 The Landlord acknowledged receiving the security and pet damage deposits and that he is holding them in trust for the Tenants.

JH submitted into evidence a signed copy of the 1 Month Notice. The Landlord stated the 1 Month Notice was served in the Tenants' mailbox on July 15, 2022. JH acknowledged the Tenants received the 1 Month Notice. I find the 1 Month Notice was served on the Tenants pursuant to section 88 of the Act. The 1 Month Notice stated the causes for ending the tenancy were:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord
- Tenant has not done required repairs of damage to the unit/site/property/park
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The details of the causes for ending the tenancy set out in the 1 Month Notice were:

> The tenant has received multiple notices and warnings from the Strata council and not informed the landlord of fines incurred by the tenants. The fines were not paid and no notice to the owner was given.
> The tenant increased garbage service without notice or payment, violating lease terms
> Multiple verbal complaints have been given to the Strata council describing the tenants as adversarial and yelling at other members in the complex.
> The tenant has stored ample items between the houses in the complex, which violates Strata rules.
> Repair or maintenance concerns were not reported to the landlord immediately, nor were they remedied

The Landlord stated most of the information he had relating to ending the tenancy for cause based on the Tenants, or a person permitted on the property by the Tenants, had significantly interfered with or unreasonably disturbed another occupant or the Landlord, was based on hearsay from neighbours and the strata council. As such, the Landlord stated he was abandoning this as a cause to end the tenancy.

The Landlord submitted a copy of a Form K that was signed by the Tenants on February 1, 2022 together with the bylaws and Rules of the strata corporation. The Form K states:

1. Under the *Strata Property Act*, a tenant in a strata corporation **must** comply with the bylaws and rules of the strata corporation that are in force from time to time (current bylaws and rules attached).
2. The current bylaws and rules may be changed by the strata corporation, and if they are changed, the tenant **must** comply with the changed bylaws and rules;
3. If a tenant or occupant of the strata lot, or a person visiting the tenant or admitted by the tenant for any reason contravenes a bylaw or rule, the tenant is responsible and may be subject to penalties, including fines, denial of access to recreational facilities, and if the strata corporation incurs costs for remedying a contravention, payment of those costs.

The Landlord stated repairs to the rental unit were required due to a gas leak and that the repairs necessitated the removal of some drywall in the rental unit. The Landlord stated the Tenants were not responsible for the gas leak. The Landlord stated the Tenants did not want tradespeople to come into the rental unit to install replacement

drywall. The Landlord stated JH agreed to perform the drywalling but JH failed to complete the work. JH stated he completed the drywalling and patching but inadvertently missed one section, of about one square foot, downstairs in the rental unit. JH stated he completed the drywalling before the Landlord served the Tenants with the 1 Month Notice. The Landlord stated the last inspection he performed on the rental unit was on March 14, 2022 and admitted he did not perform an inspection immediately prior to serving the 1 Month Notice on the Tenants. The Landlord also admitted he did not serve a written notice on the Tenants to request they complete the drywalling by a date that would give the Tenants a reasonable period of time to complete the repairs.

The Landlord stated one of the dogs owned by the Tenants damaged a portion of the carpeting on the landing of the lower set of stairs in the rental unit. The Landlord stated the Tenants did not want installers to come into the rental unit and that JH agreed to replace the damaged portion of carpeting. JH stated the Landlord purchased and provided a roll of carpeting so the Tenants could repair the carpet. JH stated the dog, at a later time, damaged the carpeting on the upper set of stairs as well. JH stated he replaced the carpeting on the landing for the lower set of stairs but has not completed repairing the upper set of stairs. JH also stated the Tenants were concerned that, if they replaced the carpeting on the upper set of stairs, the dog might damage them again. JH stated he planned to repair the carpeting on the upper set of stair before the Tenants vacated the rental unit. The Landlord admitted he did not serve a written notice on the Tenants to complete the repairs to the carpeting within a reasonable period of time after giving notice.

The Landlord stated the Tenants stored items on the outside of the rental unit that encroached onto the property line of the adjoining strata lot in violation of section 3.1.A of the strata bylaws. JH admitted he stored a toolbox and canoe on the side of the rental unit. The Landlord admitted he did not give the Tenants a written notice to correct this encroachment on the adjoining strata property by a date that would give the Tenants a reasonable period to correct this breach.

The Landlord stated the Tenants have two dogs in contravention of section 3.4.D of the strata bylaws that states residents may only have one dog or one cat in the strata lot. JH stated the bylaws were amended and they now permit two dogs in a strata lot. JH quoted the strata corporation number and the provisions stated in the amended bylaw that allows two dogs in a strata lot. The Landlord admitted he could not state with certainty that the strata bylaws were amended to allow two dogs. The Landlord admitted he did not give the Tenants a written notice requiring the Tenants to correct this alleged

breach of the strata bylaws regarding the maximum number of dogs by a date that would give the Tenants a reasonable period of time to correct this breach.

The Landlord stated the Tenants or their guests had, on a number of occasions, parked their cars in areas that are prohibited by the strata bylaws. The Landlord stated the strata corporation has fined the Landlord for the parking violations. JH admitted the Tenants violated the bylaws on several occasions. JH stated the Tenants have paid the fines to the strata corporation. The Landlord did not dispute JH's testimony that the fines have been paid. The Landlord admitted he did not give the Tenants a written notice to correct this breach of the strata bylaws by a date that would give the Tenants a reasonable period of time to correct this breach.

The Landlord stated the owners of the strata are responsible for arranging and paying for garbage collection. The Landlord stated the Tenants had, without his permission, increased the garbage collection for the rental unit resulting in increased charges. JH stated the garbage collection was insufficient for their needs and the Tenants arranged for it to be increased. JH stated the Tenants reimbursed the Landlord for the additional charges. The Landlord did not dispute JH's testimony that the Tenants have paid for increased garbage collection charges.

Analysis

Subsection 41(1)(h), 41(1)(g) and sections 47(2) through 47(5) of the Act state:

> 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
>
> (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
>
> […]
>
> (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time;

(h) the tenant
(i) has failed to comply with a material term, and
(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
[…]

(2) A notice under this section must end the tenancy effective on a date that is
(a) not earlier than one month after the date the notice is received, and
(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
(b) must vacate the rental unit by that date.

The 1 Month Notice was served in the Tenants' mailbox on July 15, 2022. Pursuant to section 90 of the Act, the Tenants were deemed to have received the 1 Month Notice on July 18, 2022, being three days after it was placed in the mailbox. Pursuant to section 47(4) of the Act, the Tenants had until July 28, 2022, to make an application for dispute resolution to dispute the 1 Month Notice. The records of the Residential Tenancy Branch disclose the Tenants made their application on July 23, 2022. Accordingly, the Tenants made the Application to dispute the 1 Month Notice within the 10-day dispute period required by section 47(4) of the Act.

### *1. Cause Based on Tenants Significantly Interfering or Unreasonably Disturbing Another Occupant or the Landlord*

The Landlord stated he was not providing testimony or submitting evidence in respect of this cause based on the Tenants significantly interfering or unreasonably disturbing

another occupant or the Landlord. As such, I find the Landlord has not established, on a balance of probabilities, that the Tenants breached section 47(1)(d)(i) of the Act.

### *2. Cause Based on Tenants' Failure to Perform Repairs*

The Landlord stated the Tenants failed to perform repairs to the wallboard and the carpeting as they agreed to do. JH stated all the repairs have been completed except for one portion of the carpeting. The Landlord admitted his last inspection of the rental unit was on July 14, 2022 and that he did not inspect the rental unit prior to serving the 1 Month Notice on the Tenants. The Landlord admitted he did not give the Tenants written notice to complete the repairs within a reasonable period of time. As such, I find the Landlord has not satisfied the requirement of section 47(1)(g) that he gave written notice to the Tenants requiring that they perform the repairs within a reasonable period of time. Based on the foregoing, I find the Landlord has not established, on a balance of probabilities, that the Tenants breached section 47(1)(g) of the Act.

### *3. Cause Based on Breach of Material Terms*

*Residential Tenancy Policy Guideline 8* ("PG 8") provides guidance on unconscionable and materials terms. PG 8 states in part:

**Material Terms**

> A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.
>
> To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.
>
> The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

The Landlord stated the Tenants stored items on the outside of the rental unit that encroached onto the property line of the adjoining strata lot in violation of the strata bylaws. JH admitted he stored a toolbox and canoe outside the rental unit. The Landlord did not submit any evidence to establish the strata council levied a fine for violation of the bylaws for this breach of the strata bylaws and, if he had done so, that the Tenants did not pay the fine. The Landlord admitted he did not give the Tenants a written notice to correct this violation of the strata bylaws. As the Landlord did not give the Tenants written notice to correct this violation of the strata bylaws within a reasonable time, I find the Landlord has not established that the Tenants breached section 47(1)(h) of the Act in respect of their encroachment on the adjoining strata lot.

The Landlord stated the Tenants have two dogs. The Landlord referred to the strata bylaw that states residents may have only one dog or one cat in the strata lot. JH stated the bylaws provided by the Landlord to the Tenant included an amendment that states that two dogs are permitted in a strata lot. JH read into evidence the amended bylaw. The Landlord admitted he could not state with certainty that the strata bylaws had not been amended to allow two dogs. The Landlord also admitted he did not serve the Tenants with a written notice for them to correct the breach within a reasonable period of time. As such, it is unnecessary for me to consider whether was a breach of a material term of the tenancy agreement. Based on the foregoing, I find the Landlord has not established that the Tenants breached section 47(1)(h) of the Act in respect of keeping two dogs in the rental unit in violation of the strata bylaws.

The Landlord stated the Tenants or guests, on many occasions, parked their cars in areas that are prohibited by the strata bylaws. The Landlord stated the strata corporation fined the Landlord for several of the violations. JH admitted the Tenants violated the bylaws on parking. JH stated the Tenants have paid the fines to the strata corporation. I find the violation of the bylaws in respect of parking is not a material term of the tenancy agreement as the Landlord did not provide any evidence that the Landlord and Tenant had agreed that a violation of the strata corporation's parking restrictions were a term of the tenancy agreement that was so important that a breach them would give the Landlord the right to end the tenancy agreement. Based on the foregoing, I find the Landlord has not established, on a balance of probabilities, that the Tenants breached section 47(1)(h) of the Act as a result of violations of the strata bylaws respecting parking.

The Landlord stated that arrangements for garbage collection were the responsibility of the owners of the strata lots. The Landlord stated the Tenants arranged, with his consent, for an increase in the amount of garbage collected from the residential property. The Landlord stated this resulted in increased garbage collection charges. The Tenant stated the garbage collection was insufficient for the Tenants' requirements and admitted the Tenants made arrangements for increased garbage collection. JH stated the Tenants reimbursed the Landlord for the additional charges for garbage collection. The Landlord did not dispute JH's testimony. I find the Landlord has not established that, the arrangements made by the Tenants for additional garbage collection, particularly when the Tenants have reimbursed the Landlord for those charges, was a breach of the tenancy agreement that was sufficient to give the Landlord the right to end the tenancy agreement. As such I find the Landlord has not established, on a balance of probabilities, that the Tenants breached section 47(1)(h) of the Act in respect of increasing the garbage collection without the prior consent of the Landlord.

Based on the foregoing, I find the Landlord has not proven, on a balance of probabilities, cause for ending the tenancy pursuant to subsections 47(1)(d)(i), 47(1)(g), or 47(1)(h) of the Act. As such, I dismiss the Application without leave to reapply. The tenancy will continue until it is lawfully ended pursuant to the Act.

As the Tenants have been successful in the Application, I grant the Tenants recovery of the filing fee of $100.00 pursuant to subsection 72(1) of the Act. Pursuant section 72(2)(a) of the Act, the Tenants are allowed to enforce this order by deducting $100.00 from the next month's rent, notifying the Landlord when this deduction is made. The Landlord may not serve the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenants.

I recommend the Tenants familiarize themselves with the provisions of the Act and the *Residential Tenancy Regulations* ("Regulations") and to comply with the terms of the tenancy agreement and strata bylaws. Failure to comply with the terms of the tenancy agreement and strata bylaws could have dire consequences for the Tenants. The Tenants should ensure they immediately notify the Landlord of any mail delivered to the rental unit that is addressed to the Landlord so that arrangements can be made for the Landlord to pick it up. If either the Landlord or Tenants have questions regarding their rights and responsibilities under the Act and Regulations, they have the option of calling the Contact Centre of the Residential Tenancy Branch at the number provided on the last page of this decision.

Conclusion

The 1 Month Notice is cancelled and of no force or effect. The tenancy will continue until it is lawfully ended pursuant to the Act.

The Tenants may deduct $100.00 from next month's rent in satisfaction of their monetary award for recovery of the filing fee of the Application.

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 18, 2022

Residential Tenancy Branch