



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, OLC, FF, O

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order cancelling a notice to end tenancy for cause; for an order cancelling a notice to end tenancy for unpaid rent or utilities; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The hearing did not conclude on its first or second days and was adjourned for a continuation of the evidence and testimony. The landlord and both tenants attended on all days of the hearing, each gave affirmed testimony and each provided evidentiary material to the Residential Tenancy Branch and to each other prior to the commencement of the hearing. The parties each provided some evidentiary material that was not submitted within the time provided under the *Residential Tenancy Act* or Rules of Procedure, however the parties did not oppose inclusion of any evidence.

The landlord also called 3 witnesses, and the tenants called 3 witnesses, all of whom gave affirmed testimony. The parties were given the opportunity to cross examine each other and the witnesses on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Are the tenants entitled to an order cancelling a notice to end tenancy for cause?

Are the tenants entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?

Are the tenants entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?

### Background and Evidence

The parties agree that this fixed term tenancy began on July 1, 2011 and expired on June 30, 2012, thereafter reverting to a month-to-month tenancy, and the tenants still

reside in the rental unit. Rent in the amount of \$1,100.00 per month is payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. The landlord did not collect a security deposit or a pet damage deposit at any time before or during the tenancy, and testified that the tenants are property managers and are required under the tenancy agreement to maintain and manage the 4 rental units in the complex. A copy of the tenancy agreement was not provided for this hearing.

The landlord further testified that there are no rental arrears, but the landlord has issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on December 1, 2012 by serving one of the tenants personally on that date. A copy of the notice was provided by the tenants for this hearing. The notice is dated December 1, 2012 and it states that the tenants have failed to pay utilities in the amounts of \$79.89 and \$151.72 following a written demand on December 1, 2012. Only 1 page of the 2-page form has been provided. The landlord testified that the notice to end the tenancy was the only form of demand made for the payment of utilities.

The landlord further testified that another tenant in the complex phoned the landlord to advise that an altercation had occurred between the tenant and another tenant (hereinafter referred to as the neighbor), and the police were there. The landlord attended, but the police wouldn't say much other than to ask the landlord questions and told the landlord that there was an assault and the police took the tenant away in handcuffs. The landlord testified that the neighbor who was assaulted called the police, and the neighbor also suffered bruises and abrasions.

The landlord also testified that the tenants blocked the windows and door of the neighbor by placing a barbeque and large planters in front of them. The landlord has also provided photographs showing the barbeque in front of a window and another of a large planter in front of a window that appears to open outward, but is blocked from being opened by the large planter.

The landlord gave the tenants a Caution Notice on September 30, 2012, a copy of which was provided for this hearing, however the landlord testified that the copy served on the tenants had circles around paragraphs (b) and (d) in the section of the form that speaks to Section 28 of the *Residential Tenancy Act*. The problems did not stop, and the landlord served a 1 Month Notice to End Tenancy for Cause on November 27, 2012 by serving one of the tenants personally. The tenants provided a copy of that notice for this hearing as well, and it is dated November 27, 2012 and contains an expected date of vacancy of January 1, 2013. The reasons for issuing the notice are stated to be that:

- "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord," and

- “Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.”

The landlord also testified that the maintenance duties of the tenants have been removed because of a few issues, including the fact that the tenants didn't clean the yard as agreed. The landlord also provided photographs to show that the leaves in the yard have not been raked, although the tenants claimed to have re-seeded the yard.

The landlord was asked during cross examination why the caution notice was only issued to the tenant, and the landlord explained that the landlord attempted to talk to the tenant but the tenant slammed the door in the landlord's face and told the landlord to talk to the tenant's spouse.

The first witness of the landlord testified to being a tenant in the lower level of the rental complex (the neighbor), and stated that the tenant used a hose to spray the witness on several occasions. The witness leaves the house the same time every day, and the tenants hear that and would be there blocking access on a path, so the witness would walk on the grass. The witness also explained that on one occasion, the witness went to check the mail and the tenant got up from a seated position on the steps, started sweeping dirt onto the witness and pushed the witness with the broom and the tenant's body, who is a large person.

On another occasion, the witness heard someone throw something at the witness' window and right after saw someone going into the tenants' rental unit. Another day a similar situation occurred, and the witness saw one of the tenants through the window outside on a swing, but did not see the tenant throw anything. The witness stated that the window is at the back yard of the complex, and the back yard is fenced; no one else uses that space and it is also gated.

The witness also testified that the tenants have blocked the bedroom, bathroom and other windows of the witness with a barbeque and large planters.

The witness further testified that the landlord had attended the rental property in hopes of speaking to the tenants to see if differences could be settled and to ascertain why the windows were blocked. One of the tenants was sun-bathing in the yard and the landlord asked to speak with them, but the tenant yelled obscenities, went into the house and told the landlord to speak with the other tenant. The witness testified that at

least once per week the tenant would re-arrange things in the back yard, but consistently blocks the witness' windows.

Another witness of the landlord was also a tenant of the rental complex and is the son of the neighbor who testified. The witness testified that he was a tenant in the rental complex from September, 2010 to September 1, 2011. He stated that during that tenancy, there were issues of the tenants doing laundry all hours of the night, alot of yelling and screaming, and dogs barking all hours. The witness is a student and the laundry room was next to the witness' bedroom. The laundry room is shared by the witness and the tenants, and other tenants in the complex use another laundry room.

The witness also testified that the tenants didn't clean up after the dog, and stated that the tenants put a barbeque in front of the witness' mother's bathroom window.

Another witness of the landlord testified to being a tenant in the complex from September, 2011 to June, 2012. The landlord questioned the witness about a note left in the laundry room, and the witness confirmed leaving a note asking that her laundry detergent not be used by other tenants. The landlord questioned the witness as to whether or not a nasty note was left in response, and the witness stated that if there was one, the witness never saw it.

The landlord did not return the security deposit, and the witness didn't ask for it back. The witness testified that she had outgrown the rental unit, and had told the tenants that she was moving to be closer to family.

The witness further testified that in speaking with the tenants, the witness advised that the lease signed required 2 month's rent when she moved out. The witness had told the tenants that she'd be speaking to the Residential Tenancy Branch if the landlord attempted to collect it.

The witness was asked in cross examination whether or not the witness had ever advised the landlord that she had been without power for 4 hours, to which the witness responded, "I never told the landlord that; I would remember that."

The first tenant testified that the rental unit was originally advertised as a 3 bedroom house. The tenants worked out an agreement with the landlord for rent in the amount of

\$1,300.00 per month and the tenants would manage the complex. There was a lot of work to do.

The tenants had issues with the neighbour from the outset, and the neighbour had told the tenants to watch out for the landlord because the landlord could turn on them anytime. Then the landlord told the tenants that the neighbour was unstable.

The tenant further testified that the landlord had driven by the rental unit, then stopped and told the tenants they had too many lights on and then bugged the tenants constantly about power. The power went out when the microwave or vacuum cleaner were on.

The landlord had asked the tenants to do laundry at 10:00 a.m. due to another tenant's schedule, and the tenants complied.

In March, 2012 the tenants paid all rents due to the landlord to the end of 2012. In June, 2012, the landlord told the tenants they weren't to look after the property anymore and to just pay rent. Then in July, 2012 the landlord told the tenants rent was increased to \$1,375.00 per month effective in July, 2012 and the tenants paid that increase. The landlord already had \$1,100.00 per month to the end of the year, and the tenants started to pay the difference.

The tenants had agreed at the outset of the tenancy that the landlord could leave furniture in a large bedroom for 3 months, but the landlord never did move the furniture out.

The tenants have 2 small dogs which could run directly into the neighbour's suite, and to prevent that, the tenants put the barbeque in front of the neighbour's window. The barbeque remained there for half a day, and then the tenants moved it. The tenants also placed a planter in front of the neighbour's window which remained there for about 3 days. The neighbour and the neighbour's daughter would play with the dogs and the dogs would go to the windows looking for someone to play with.

The tenant also denies a statement given in evidence by the neighbour that states that the tenant's dogs ruined the neighbour's blinds. The tenant testified that the blinds were given to the neighbour by the tenants, and the dogs could not have ruined the blinds; they couldn't reach it.

The tenant also testified that hot water has always been inadequate at best. The landlord had informed the tenants on several occasions, blaming the size of the hot water tank. In November, 2012 when a tenant in a lower level of the complex moved out, the tenant turned a valve on to the shared hot water tank and it worked great. On

November 24, 2012 the landlord took away the duties of the tenants and then told the tenant to do the yard maintenance or he'd hire someone and charge the tenants for it. Then the landlord served the tenants on November 27, 2012 with a notice to end tenancy and an inspection notice for November 29, 2012 regarding the hot water issue. At that time, the landlord told the tenants that they would have to pay half of the utilities instead of the agreed one-third because the other tenant had moved out. The tenant called the Residential Tenancy Branch who advised that the landlord could not do that.

On November 29, 2012 the landlord returned to do the inspection and gave the tenant a Mutual Agreement to End Tenancy but the tenant declined to sign it and served the landlord with dispute resolution documents. The tenant testified that the utilities are paid on the due date. The landlord texted the tenant on December 1, 2012 about post-dated cheques for utilities saying that the landlord now wants it paid on the 1<sup>st</sup> day of the month. The tenant denied the request. The landlord attended the rental unit, gave back the post-dated cheques for utilities and issued the tenants a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

During cross examination, the tenant was asked if the tenant had collected rent from the neighbour in August, 2011. The tenant stated that no rent was collected, but the neighbour gave the tenant a list of demands which were passed on to the landlord and the landlord told the tenants not to listen to the neighbour.

The other tenant testified that at the outset of the tenancy the landlord had asked to use the TV room for the first 3 months of the tenancy to store some furniture, and the tenants agreed, but would need the room after that for the tenants' daughter.

The tenant also testified that the neighbour was always very moody, and the tenants didn't understand why she was so erratic. The neighbour called the tenant fat all the time and told the tenant that she belonged in a mental institute. They talked to the landlord but the landlord always shuts the tenant down and wouldn't allow the tenant to talk.

The tenant also testified that during the altercation described by the neighbour, the neighbour pushed the tenant who hit a shoe rack, and the tenant started crying. The tenant called the landlord who said that he didn't care. The tenant was hit, her hair was pulled by the neighbour, and the neighbour's daughter stopped her. The neighbour yelled obscenities to the tenant and foul names against the tenant and the tenant's family.

The tenant was arrested and the police took photographs. They said they were shocked at how the tenant's body looked and told the tenant that the injuries did not match the neighbour's statement and no charges were laid.

The first witness of the tenants stated that she was visiting the tenants in July, 2012, and overheard the landlord saying that a further security deposit and pet damage deposit were required and the landlord wanted a room back of the tenant's rental unit. The witness advised the landlord that the witness is also a landlord and a landlord cannot require that. The landlord told the witness to shut up and take the tenants as tenants to her rental unit.

While visiting, the witness saw the neighbour arrive at the outside patio where the witness was visiting the tenant. The tenant was sweeping, and the neighbour bumped into the tenant and went to the mail box. Ten or fifteen minutes later, the neighbour went to check the mail again and repeated that several times. Each time, the neighbour said nothing, but would smirk and bump into the tenant. The tenant had done nothing wrong. The tenants have been helpful, pleasant and a loving family, and even helped the neighbour in a time of need. The neighbour had no food, and the tenant gave her food and money. The tenants have lately been confined to the house to now avoid the neighbour.

The witness was asked in cross examination if the witness had ever told the neighbour she couldn't walk in the yard, to which the witness replied that she's never even talked to the neighbour.

The second witness of the tenants testified to being a tenant of the complex from July 1, 2012 to November 16, 2012. The witness also testified that there were no issues with respect to barking dogs or laundry during the course of that tenancy. The tenants had offered the use of the back yard, but the witness had no use for it. The tenants have never been disruptive, but quite the opposite, helping the witness out and never made the witness feel uncomfortable. The witness also testified that the witness has never seen any disrespect or abuse to the neighbour or any other tenants in the complex.

The witness also testified that the landlord had called on October 31, 2012 saying that the witness had to move out within 2 months because the rental unit did not pass inspection. The landlord did not offer any compensation for the 2 month notice, but the

tenant complied and moved out on November 16, 2012 and paid half a month rent for that month. The landlord has not returned the witness' \$300.00 security deposit.

During cross examination the witness was asked if the witness had contacted the landlord about a hot water issue during the tenancy. The witness replied that there was no hot water for a few days. The landlord had blamed the witness' suitcases or other belongings that may have hit the valve, but the witness told the landlord that no suitcases were anywhere near the valve.

The final witness of the tenants stated that the tenants moved in on August 25, 2012 and the witness and the witness' father were painting the ceiling. The tenants got the keys to the rental unit on June 27, 2012 and the rental unit was a complete mess. The outside was very dirty, window frames were missing, garbage, an old washer, boxes containing garbage were present, and the balcony was broken. The witness and the witness' father were there to renovate, and took some of the garbage to the local landfill, and then helped the tenants move in on August 25, 2012.

The witness was there in September and went into the rental unit for lunch. The landlord arrived stating that he wanted to get something, but came out of a room empty handed and started unplugging things in the rental unit. He unplugged an air purifier, a lamp, a toaster and a light over the reptile aquarium. The tenant was polite but asked the landlord to call before visiting due to the tenant's autistic child. The witness stated that the autism requires a structured environment and a schedule for the child is very important.

The witness has known the tenants for 20 years, and has known them to be wonderful people; showing no disrespect to anybody. There were no problems with the tenants' previous tenancy which lasted 20 years.

During cross examination the witness was asked if the tenants had ever told the witness about any power problems. The witness replied that no such discussions ever took place but the witness heard the landlord tell the tenants that they didn't need to have so many things plugged in.

### Analysis

Firstly, with respect to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the *Residential Tenancy Act* states that a landlord can treat unpaid utilities as unpaid rent 30 days after giving a tenant written notice to pay the utilities. In this case, the



landlord didn't give any written notice, but simply issued the notice to end tenancy. I find that to be contrary to the *Act*, and the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is hereby cancelled.

With respect to the 1 Month Notice to End Tenancy for Cause, I have reviewed the evidence and the notice. The landlord has issued the notice citing criminal activity, and I find that the landlord has failed to establish that. The neighbour testified to an assault, and the tenant testified about it as well. It is not clear in the evidence who actually assaulted whom. I have heard from witnesses that the neighbour bumped into the tenant several times, made a nuisance of herself by checking the mail several times which I find was done to antagonize the tenant. The tenant testified that the tenant's injuries after that altercation did not match the statement given by the neighbour, according to the police. No charges were laid, and therefore, I find that the landlord's notice to end tenancy for criminal activity cannot succeed.

The notice to end tenancy also states that the "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord." I am not certain who has actually unreasonably disturbed whom. The landlord has not complied with the *Residential Tenancy Act* with respect to a number of tenancies, as evidenced by the witnesses who have rented from this landlord in the past. The landlord now wishes me to uphold a notice to end tenancy after failing to comply with the *Act*, and I am not satisfied that the landlord has not made an error again with respect to whom ought to have been served with the notice to end tenancy for interference or disturbances.

The notice to end tenancy is hereby cancelled, and the tenancy continues.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$50.00 filing fee for the cost of the application, and I hereby order the tenants to reduce the next month of rent payable to the landlord by that amount.

With respect to blocking windows, I accept the testimony of the tenants that the tenants' dogs like to play with the neighbours and blocking the windows is only meant to prevent the dogs from entering the neighbours' rental unit. However, the tenants must refrain from doing so and must monitor their dogs' behaviour.

### Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on December 1, 2012 is hereby cancelled.

The 1 Month Notice to End Tenancy for Cause issued on November 27, 2012 is also cancelled, and the tenancy continues.

I hereby order the landlord to comply with the *Residential Tenancy Act* by refraining from entering the rental unit unless proper notice is given to the tenants, and the landlord must not unplug any appliances or electrical items within the rental unit.

I further order the landlord to comply with the *Residential Tenancy Act* by maintaining the rental unit in such a state that hot water is continuously available to the tenants.

I further order the tenants to reduce the amount of rent payable to the landlord by \$50.00 for the month of February, 2013 for reimbursement of the \$50.00 filing fee.

I further order the tenants to refrain from blocking any windows of any other tenants with any objects.

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: January 18, 2013.

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Residential Tenancy Branch

