



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, RR, OPC, FF

### Introduction

In the first application, the tenant seeks to cancel a one month Notice to End Tenancy dated March 12, 2014 and for a rent reduction for the landlords' alleged failure to replace a carpet.

In the second application, the landlords seek an order of possession pursuant to the March 12 Notice.

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that either party is entitled to any of the relief requested?

### Background and Evidence

The rental unit is a four bedroom townhouse in a seven townhouse complex owned by the landlords. The tenancy started in July 2012 though the tenant occupied the premises with a previous tenant for two years before that. She has lived in the rental unit for about four years. The current monthly rent is \$1250.00. The landlords do not hold a security deposit or pet damage deposit though the tenant has kept two small dogs throughout her tenancy.

The Notice to End Tenancy served on the tenant lists seven different grounds for eviction. At hearing the landlords relied on three particular aspects of the tenant's conduct: repeated late payment of rent, failure to remove dog waste from the area behind her rental unit and failure to properly secure her garbage.

In regard to the first item, the landlords testified that their practice is to attend at the seven unit complex on rent day and collect the rent from each tenant directly. It

appears that this has been their habit throughout the tenancy. It is their view that sometimes the tenant isn't home and sometimes the tenant does not have her chequebook with her. In these instances the landlords are required to wait or to attend at the tenant's place of business to get their rent cheque, sometimes days later. The landlords cite late rent payments for the months of November and December 2013 and January and February 2014 in particular.

In March 2014 the landlords requested and received post dated cheques for rent from the tenant. Though rent is due on the first day of the month under the tenancy agreement, the two post dated cheques supplied by the tenant were post for the third of the month, not the first.

The landlord Ms. V. said at hearing that "it all comes down to rent," which I take to mean that the late rent issue is the one of chief concern to the landlords.

In regard to the second ground the landlords provided photos showing a fairly dense cluster on dog waste on the grassy area behind the tenant's rental unit. It appears that this rear area is "common area" to the seven unit complex as is the grassy area behind each of the seven units. There is a children's play area behind the tenant's rental unit and the landlords claim the dog droppings left by the tenant's dogs impair the reasonable use of the play area by children in the complex.

The landlords say that over the past two years they've confronted the tenant about her failure to clean up after her dogs and that when on March 9<sup>th</sup> of this year they confronted her again, it led to an angry response with the tenant refusing to pick up the waste on her day off. They say that the person tasked to mow the common area lawn won't mow it behind the tenant's area because of the dog waste.

In regard to the garbage, the landlords complain that the tenant keeps her garbage out in front of her house and does not secure it properly. They say the garbage often gets strewn or blown around and the tenant does not pick it up.

In response, the tenant says the landlords have always permitted payment of rent a few days after the first and that the landlord Mr. V. had specifically OK'd payments on the third of each month. That's why she post dated the cheques the way she did. She says both she and the landlords are busy people and they never seem to reach and agreeable time to pick up cheques. She doesn't feel it's her obligation to wait around on rent day until a landlord drops by for the rent.

In regard to dog waste, the tenant admits that she lets her dogs run off leash in the back yard but, she says, other tenants in the complex do too and some of the dog waste behind her rental unit comes from those dogs.

In regard to garbage, the tenant says that during the four years she's lived in the rental unit the landlords have never raised the issue of a garbage problem. She says that on occasion garbage will be strewn from four commercial dumpsters located directly behind the property as well as by teenagers who frequent the area.

### Analysis

In all the circumstances, I find that the evidence before me does not suffice to justify termination of this tenancy on the grounds cited in the Notice dated March 12, 2014.

In regard to the ground of repeated late rent payment, the *Residential Tenancy Act* (the "Act") is clear that a tenant who is repeatedly late paying rent may be evicted. The Residential Tenancy Policy Guideline imposes a general rule that three late payments are sufficient as long as they aren't too far apart. The *Act* is very strict in this regard and a tenant may be evicted whether or not the landlords were inconvenienced by the late payments.

Had the tenant been required to find her own means to ensure payment of rent on the first of each month, and had she failed to do so three times, the landlords may well have received an order of possession at this hearing. However, the landlords chose to attend at the complex on rent day and collect the rent in person. Having chose this method they cannot reasonably be heard to complain when they find the tenant not home when they knock on her door without a telephone call or email as a forewarning. Without a written agreement enshrining this procedure and obliging a tenant to turn over the rent at the door on a specific day and time, there is bound to be an uncertainty factor.

Sometimes the tenant is home and doesn't have her chequebook. That is not a reasonable excuse for the tenant not to pay her rent in my view, but all in all, the evidence does not show that on three particular months the rent was late for that particular reason.

Finally, I would dismiss this ground for the Notice because of the landlords' March 9<sup>th</sup> letter to the tenant. In that letter the landlords brought the late payment issue (as well as the dog waste and garbage issues) to the tenant's attention saying she needed to pay on the first of each month and thanking her for the post dated cheques. Three days later the landlords served the tenant with the Notice to End Tenancy. The only

intervening event was the raising of voices by one or both of the tenant and the landlord Ms. V. when the tenant was requested to pick up dog waste. In my view, by giving this letter, the landlords elected to give the tenant a warning about late and not to attempt to evict her based on that reason. There was nothing between the dated of this letter and the Notice to End Tenancy three days later that would turn conduct worthy of warning into conduct justifying eviction.

In regard to the issue of dog waste, the evidence satisfies me that at least a portion of the dog waste in the common area behind the tenant's rental unit is coming from the tenant's unattended dogs. Nevertheless such conduct is very far from conduct shown to "significantly interfere with or unreasonably disturb" another occupant or the landlord, or creating a health risk.

Additionally, given the March 9<sup>th</sup> letter, it appears that the dog waste issue was only then reaching the level of an official warning from the landlords. Having given a warning, it is the tenant's conduct after that warning that will be important. Having been given the March 9<sup>th</sup> warning and having gone through this procedure, the tenant should know that the use of the back area by her dogs will be more closely monitored. Should she fail to clean up after them she may be responsible for the reasonable cost of the landlord having someone do so or, should the dog waste issue become so severe as to be shown to "significantly interfere with or unreasonably disturb" another occupant or the landlord or create a health risk, possible eviction.

In regard to the garbage issue, the evidence does not show that it was a significant issue before the March 9<sup>th</sup> letter. At hearing the landlords refer to a pumpkin rotting issue some two years prior, and the written statement of a long gone tenant of the complex, but both those items of evidence are far too remote from the current situation to be of any significant evidentiary weight. Again, the March 9<sup>th</sup> letter shows that the garbage problem was of a degree warranty only the following caution,

...there are wrappers and waste that spew out of your garbage bin: on garbage day. Please, pick up the remains that are left on the ground. Also: there always seems to be a pile of garbage in the front of your door.

Nothing changed between the March 9 letter and the March 12 Notice but for the raised voice(s). The landlords have not shown that the tenant is permitting garbage or waste to litter the premises and definitely not to a degree that would justify eviction.

In her application the tenant also sought relief relating to an alleged carpet replacement. I dismiss this item of her claim. The evidence does not establish either that the carpet needed to be replaced or that either landlord agreed to replace it or have it replaced.

Conclusion

The tenant's application for a rent reduction is dismissed. Her application to cancel the Notice is allowed. The Notice to End Tenancy dated March 12, 2014 is set aside. The landlords' application for an order of possession is dismissed.

I make no order for recovery of either side's filing fee.

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 13, 2014

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Residential Tenancy Branch

