



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MT, CNC

### Introduction

The tenants applied requesting more time to dispute a 1 month Notice ending tenancy for cause and to cancel a 1 month Notice to end tenancy for cause issued on July 25, 2014.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the testimony provided.

### Preliminary Matters

Neither party supplied evidence to the other or the Residential Tenancy Branch (RTB) within the required time-frame set out in the Rules of Procedure.

The tenants applied for dispute resolution on August 12, 2014; the landlord received the hearing documents on 22 August, 2014. The landlord said they could not obtain a letter from the occupant of the lower unit, as she had been ill; so their written submission was delayed. However, that individual was present at the hearing to provide testimony.

The tenants supplied written submissions to the landlord by taping them to the door on October 9, 2014. That evidence is deemed served on October 12, 2014; which fails to meet the requirement of service of 5 days prior to the hearing.

The tenants received the 1 month Notice to end tenancy for cause on August 5, 2014. The Notice was sent via registered mail on July 25, 2014. The landlord did not have the Canada Post tracking information before them. I accepted that the tenants had received the Notice on August 5, 2014 and that their application to dispute the Notice, made on August 12, 2014, was within the required 10 days. Therefore, the tenants did not require more time to dispute the Notice.

### Issue(s) to be Decided

Should the 1 month Notice ending tenancy for cause issued on July 25, 2014 be cancelled?

## Background and Evidence

The tenancy commenced in April 2014. Rent in the sum of \$975.00 is due on the 1<sup>st</sup> day of each month. A security deposit in the sum of \$487.50 was paid.

The landlord and tenants agreed that a 1 month Notice to end tenancy for cause was issued on July 25, 2014; with an effective date of September 1, 2014.

The reason given on the Notice was:

*the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.*

The tenants said that the Notice had a number of other reasons indicated; the landlord said the Notice issued included only this one reason. Therefore, the hearing proceeded in relation to the one reason put forward by the landlord.

The tenants live in a multi-unit building; their unit is above a woman who has lived in the building for 2.5 to 3 years; the landlord's witness, J.H. The landlord said that J.H. has been disturbed on multiple occasions by the tenants; there is fighting, yelling and noise. The landlord said the police have been to the unit on a number of occasions and that they have talked to the tenants 3 or 4 times each month, in an attempt to address the reported disturbances being caused by the tenants. The tenants do not answer the phone; making it difficult for the landlord to communicate concerns. The landlord has not placed any of the concerns in writing.

The witness said that she can hear scrapping and loud bangs. The witness suffers from a medical condition and needs her sleep. The disturbances have occurred between 8 p.m. and midnight and the last call to the landlord was made several weeks ago.

The landlord and witness did not supply any dates of the disturbances but said they have occurred since the tenants moved into the building. The landlord said there had been 5 complaints; the witness said she complained 3 or 4 times in the past 5 months.

The tenants responded that within several days of moving into the unit the past occupant of the unit came to their door. They did not know him. That person had been evicted so the landlord could use the unit. The tenants wrote a letter for this person, for use in a hearing where the past occupant was claiming compensation for the landlord's failure to occupy the rental unit. That person was successful in his claim. The tenants believe that landlord has issued this 1 month Notice ending tenancy as a way of retaliating.

The landlord did not dispute the submission in relation to the hearing held related to the eviction of the previous occupant. The landlord denied they were retaliating.

The tenants said that the police have come to the multi-building complex; but not to their unit. The tenants said they have never been given written or verbal notice of noise complaints and denied disturbing the neighbor.

## Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord.

I have come to this conclusion given the absence of any dates of alleged disturbances caused by the tenants; the absence of any apparent investigation of the alleged disturbances and any written notice to the tenants, indicating that they are causing a disturbance. Accepting a report of disturbance without properly investigating that report and communicating with the tenants is insufficient support for a Notice ending tenancy. If the landlord could not reach the tenants by phone they were at liberty to issue the tenants written communication setting out the allegation. The tenants would then be in a position to respond.

In the absence of any record of the allegations made, I find that the landlord has made vague statements that are not supported by any fact or specific action taken by the landlord. The witness testimony was that perhaps on 3 occasions over the past 5 months she spoke to the landlord about noise; but no dates or any other record of contact with the tenants was supplied.

A landlord cannot end a tenancy based on non-specific allegations. The landlord has the burden of proving the reasons on the Notice and has failed to do so.

Therefore, I find that the 1 month Notice ending tenancy for cause issued on July 25, 2014 is of no force and effect. The tenancy will continue until it is ended in accordance with the legislation.

As the tenant's application has merit I find that they are entitled to recover the \$50.00 filing fee. The tenants may deduct \$50.00 from the next month's rent due. If the landlord has post-dated cheques I Order the landlord, pursuant to section 62(3) of the Act, to return the cheque so that a new cheque may be issued in the correct amount.

### Conclusion

The 1 month Notice ending tenancy for cause is of no force and effect.

The tenants are entitled to filing fee costs.

This decision is final and binding and 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: October 17, 2014

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Residential Tenancy Branch