



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FF

### 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 the tenancy for cause and to recover the filing fee from the landlord for the cost of the application.

The landlord attended the hearing and gave affirmed testimony, and was assisted in giving testimony by his son who was affirmed to well and truly interpret the proceedings. The landlord's son also gave affirmed testimony. The tenants were represented at the hearing by an agent who also gave affirmed testimony.

The landlord has provided the tenants with evidentiary material, however the material provided by the tenants has not been provided to the landlord. The tenants' agent testified that police advised the tenants to not engage in any way with the landlord, and therefore has not been served. Any evidence that either party intends to rely on must be provided to the other party. I find that the documentation could have been mailed to the landlord in any event, and I decline to consider the tenants' evidence. All evidence provided by the landlord and the testimony of the parties is considered in this Decision.

No other issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

Has the landlord established cause to issue a 1 Month Notice to End Tenancy for Cause?

### Background and Evidence

The landlord testified that this month-to-month tenancy began on October 1, 2008 and the tenants still reside in the rental unit. Rent in the amount of \$1,350.00 per month is

payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$675.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided. The rental unit is the upper unit of a house that contains a basement suite that is also tenanted and the landlord resides about 6 or 7 city blocks away.

The landlord further testified that the tenants were served with a 1 Month Notice to End Tenancy for Cause on February 1, 2015. The landlord handed the notice personally to one of the tenants. A copy has been provided and it is dated January 31, 2015 and contains an expected date of vacancy of February 28, 2015. The reasons for issuing the notice are:

- 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;
- 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;
  - jeopardize a lawful right or interest of another occupant or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord further testified that recently, the tenants in the basement suite are crying for help. On January 5, 2015 they provided a letter to the landlord putting their concerns in writing that the tenants are banging on the floors, playing loud music at night, kids are jumping, and the tenants are doing laundry at 2:00 a.m. The tenants in the basement suite have been there since May 15, 2014. Letters from those tenants dated January 1, 2015 and August 15, 2014 have been provided.

The landlord also testified that with respect to illegal activity, the landlord was assaulted by the tenants' son. The landlord went to the rental unit to get a vacuum that was stored at the rental unit and the tenants' son was angered that the landlord was there and hit him twice with cardboard boxes. The tenants' son has brought fear to the landlord, threatened to hit him, and did so.

With respect to the breach of a material term of the tenancy, the tenancy agreement provides that the tenants would cut the grass but stopped doing so in June, 2014. The

tenants in the basement suite have been cutting it and the landlord pays them for that \$30.00 each time.

The two rental units share a mailbox and the tenants in the basement suite complained that 2 envelopes of mail were missing. The landlord installed a lock on it and delivers mail to the tenants about 3 times per week.

The landlord's witness is the son of the landlord and the interpreter. He also testified stating that basically the landlord tried to get a resolution and numerous notices have been issued, however the problem is escalating. The tenants in the basement suite are now saying they are going to move out and the landlord fears that other tenants will have the same problem. The peaceful thing to do is to move out.

The tenants' agent is the son of the tenants and testified that he also lived in the rental unit with the tenants for a few years, and alleges that the accusations of the landlord are false, and the landlord is taking advantage of the tenants' kindness and lack of English skills. Since the beginning of the tenancy the landlord attends the rental unit all the time and walks into the house. The tenants always leave the door open and the landlord always had an excuse to go in and the tenants always allowed it.

The landlord put the house up for sale and the tenants cooperated fully and accommodated prospective buyers. Further, the tenants even took food to the tenants in the basement when they moved in and on other occasions. The conflict came with the landlord interfering.

The landlord told the tenants' agent that he could get more money for rent, but was looking to increase the rent and gossiped about other tenants.

About 6 or 7 months ago, the landlord arrived to fix the fridge and kicked stuff around in the rental unit and told the tenants to clean it up. The landlord also fixed it with a used part and it still doesn't work right. The landlord was told about it but said it was good enough. When the landlord had the roof fixed last summer, the landlord told the tenants they had to clean up everything outside, and they did, even though the tenants are elderly and one is a cancer patient. The landlord told them they had to so they did.

Recently, about a month ago, the landlord brought a realtor and a tenant from the basement suite to look at the rental unit. The realtor said that the tenant from the basement suite was not a client of the realtor, and when the tenants' agent told him it was not acceptable to bring in other tenants, the landlord yelled and said that he could do whatever he wants. If the landlord feels so threatened why would he bring the other tenant and why would they want to be inside the tenants' rental unit?

About a year ago, the landlord texted the tenants' daughter saying that an emergency existed with the boiler system, the house was going to blow up and the landlord had to get in. The daughter agreed, but there was no evidence that any emergency existed.

The tenants' agent stated that the landlord is not being fair. No one in the rental unit does laundry at 2:00 a.m. The tenants are elderly with medical issues and the landlord delivers letters knowing they can't even read them. The landlord's accusation that he was assaulted with cardboard boxes is totally false. The landlord's purpose for being there had nothing to do with a vacuum; it was to order the tenants to get rid of empty boxes. Accusations of loud noise and banging on floors are fabricated, and the tenants' agent believes the landlord wants to increase the rent and wants to avoid giving a 2 Month Notice to End the Tenancy for Landlord's Use of Property and pay compensation.

The tenants' agent also testified that when he dropped off the hearing package for this hearing to the landlord, the landlord called police and made serious accusations of threatening. The tenants' agent showed the police a video of the exchange and the police told him not to have anything to do with the landlord until after this hearing.

There have been no issues at all; the landlord is making accusations that are unfounded. The next door neighbour of the tenants is also a policeman and provided a letter which speaks to the character of the tenants. Rent and all bills have always been paid.

### Analysis

Where a tenant disputes a notice to end the tenancy, the onus is on the landlord to establish that the notice was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it.

In this case, the landlord has provided letters from the tenants in the basement suite but did not call upon any of the writers to testify under affirmation. In considering such evidence, I also find that the writers were not available for cross examination by the tenants' agent, and the allegations are totally denied.

I also find that since the police have not charged the tenants' agent with any offence, the landlord has failed to establish any illegal activity by the tenants..

With respect to cutting the grass, I am not satisfied that it is a material term of the tenancy, nor has the landlord provided any evidence that he pays others to cut it.

I further accept the testimony of the tenants' agent that the tenants are elderly and that banging on the floor, playing loud music at night and doing laundry at 2:00 a.m. is a ridiculous accusation.

In the circumstances, I am not satisfied that the landlord has issued the notice in accordance with the *Residential Tenancy Act*, or that the landlord had cause to issue it. I hereby cancel the notice and the tenancy continues.

I also find that the landlord has taken certain liberties believing that since he is the owner of the rental property, he is justified in locking the mailbox and attending at the rental unit. It is important for the landlord to understand that although he owns the rental property, he has a contract with tenants; they pay the rent and the landlord provides the tenants with a home to live in. It is not the landlord's home while tenanted; it is the home of the tenants. I order the landlord to immediately remove the lock from the mailbox. I further order the landlord to comply with Section 29 of the *Residential Tenancy Act*.

#### **Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Since the tenants have been successful with the application, the tenants are entitled to recovery of the \$50.00 filing fee. I hereby order the tenants to reduce rent for a future month by \$50.00 as recovery.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated January 31, 2015 is hereby cancelled and the tenancy continues.

I hereby order the landlord to remove the lock from the mailbox immediately.

I hereby order the landlord to comply with Section 29 of the *Residential Tenancy Act* as set out above.

I further order the tenants to reduce rent for a future month by \$50.00 as recovery of the filing fee for the cost of this application.

This order is final and binding and may be enforced.

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: February 20, 2015

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Residential Tenancy Branch

