



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, OPC, OPB, MNR, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the landlords and by the tenants. The landlords have applied for an Order of Possession for cause, for an Order of Possession for breach of an agreement, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenants for the cost of this application. The tenants have applied for an order cancelling a notice to end tenancy for cause and to recover the filing fee from the landlords for the cost of this application.

Both landlords and both tenants attended the conference call hearing, however only one of the landlords and one of the tenants testified. The tenants were also represented at the hearing by an agent. The parties provided evidence in advance of the hearing, gave affirmed testimony and were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision. The tenant's agent opposed the inclusion of late evidence provided by the landlords, however, it was ruled during the course of the hearing that the evidence will be considered in this Decision because the evidence was provided to the tenants along with the Landlord's Application for Dispute Resolution, which was served within the 3 days as required by the *Residential Tenancy Act*.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for cause?

Are the landlords entitled to an Order of Possession for breach of an agreement?

Are the landlords entitled to a monetary order for unpaid rent or utilities?

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

### Background and Evidence

This fixed term tenancy began on December 1, 2011 and expires on June 1, 2012. Rent in the amount of \$825.00 per month is payable in advance on the 1<sup>st</sup> day of each month, and rental arrears of \$825.00 are outstanding for the month of March, 2012. On

November 11, 2011 the landlords collected a security deposit from the tenants in the amount of \$200.00 in addition to \$325.00 in January, 2012. The total deposits paid are \$412.50 for a security deposit and \$112.50 for a pet damage deposit.

On February 21, 2012 the landlords served the tenants with a 1 Month Notice to End Tenancy for Cause by personally handing it to one of the tenants. A copy of the notice was provided for the hearing, and it is dated February 21, 2012 and contains an effective date of vacancy of April 1, 2012. The notice states 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 "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 testified that the rental unit is a condominium apartment within a strata complex that consists of 2 buildings and 77 units in total. The units are individually owned. The landlord first received noise complaints when the tenants first moved in. It was a late night move, and the landlords were also told of damages caused by the tenants moving in, however the landlords do not agree with the damage complaint. On December 19, 2011 the landlords received another complaint about noise coming from the rental unit, and on December 20, 2011 the landlord sent a text message to the tenants, which was acknowledged and a reply was received. On December 21, 2011 the tenants were given a Notice of Complaint by the landlords, which was placed in the tenants' locked mailbox. On January 28, 2012 another email complaint was received by the landlords from another neighbour in the complex with respect to noise in the tenants' rental unit. The landlords again gave a Notice of Complaint to the tenants on January 31, 2012.

The landlord further testified that when attending the rental unit on February 1, 2012 to collect rent, one of the tenants spoke to the landlord concerned about the complaints and told the landlord that they were trying to be mindful of others in the complex.

On February 20, 2012 the landlord received an email forwarded to the landlords by the strata council, which contained another complaint by another occupant in the building. The complaint stated that one of the tenants was standing in the garden of the complex smoking. The occupant stated that the tenant left cigarette butts in the garden as well as the tenants' dog's feces, both being contrary to the strata rules.

The landlord further testified that having tenant's insurance was a material term of the tenancy, and the tenants have not provided a copy to the landlords. The landlords asked the tenants for a copy on February 19, 2012 in writing by placing the request in a mail box. The tenant replied by text message that the tenants did not have insurance

and the tenants had lost their copy of the tenancy agreement. The tenancy agreement was given to the tenants at the outset of the tenancy, along with a copy of the strata rules, which was not returned to the landlords.

The landlords request an Order of Possession for cause as well as a monetary order in the amount of \$825.00 for unpaid rent for the month of March, 2012.

The tenant testified that as far as the tenants are aware, there is no designated smoking area, nor a rule about going into the garden.

The tenants misplaced the tenancy agreement, and do not recall a requirement to have tenant's insurance.

The tenants also provided a copy of the strata Minutes of the Meeting held on January 24, 2012. Specifically, the Minutes include a paragraph that states:

#### **5. Correspondence**

a) Noise – A unit complained of loud banging/knocking coming from the unit above. It has been discovered that it is the zone valve inside the unit that requires replacement, a letter will be sent to the unit to have this repaired.

The tenants are prepared to move from the rental unit on 3 days notice, but do not feel that payment of a full month's rent is justified in the circumstances.

#### **Analysis**

In the circumstances, I am not entirely satisfied that the tenants caused all of the noise that was complained about by the other neighbours.

I do find, however, that the tenants failed to get the insurance required under the terms of the tenancy agreement. The landlord testified that insurance was a material term of the tenancy, meaning that it was so important to the landlords that the landlords would not have rented to the tenants if the landlords were not provided with a promise that the tenants would get the insurance. The tenants have resided in the rental unit for about 3 ½ months and have not provided any testimony of any intention to get such insurance. Therefore, I find that the landlords are entitled to an Order of Possession for breach of a material term of the tenancy.

The notice to end tenancy issued by the landlords contains an effective date of vacancy of April 1, 2012. The *Residential Tenancy Act* states that a landlord may end a tenancy effective on a date that is not earlier than one month after the date the notice is

received, and is the day before the day in the month that rent is payable under the tenancy agreement. The *Act* also states that incorrect effective dates on a notice to end tenancy are automatically changed to the earliest date that complies with the *Act*, and I find that the effective date of the notice to end the tenancy is March 31, 2012.

With respect to the unpaid rent, the tenants do not dispute that rent was not paid for the month of March, 2012. The tenants entered into a fixed term tenancy with the landlords, and are therefore required by law to pay the rent.

Since the landlords have been partially successful with the application, the landlords are also entitled to recovery of the \$50.00 filing fee for the cost of this application.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords effective March 31, 2012.

I further grant a monetary order in favour of the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$875.00.

The tenants' application is hereby dismissed without leave to reapply.

This order is final and binding on the parties 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: March 15, 2012.

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Residential Tenancy Branch