



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

CNC, MNDC, FF

### **Introduction**

The tenants have applied to cancel a 1 Month Notice ending tenancy for cause, a monetary order for damage or loss under the Act and to recover the Application filing fee costs from the landlord.

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 during the hearing.

### **Preliminary Matters**

At the start of the hearing the tenants stated they had submitted evidence to the Residential Tenancy Branch on October 25, 2010.

The tenant's evidence was not served to the Residential Tenancy Branch at least 5 days prior to the hearing, as required by Residential Tenancy Rules of Procedure, section 3.5. Therefore, I determined that I would not be considering the tenant's late evidence submission.

The tenants acknowledged receipt of the landlord's evidence package, which included a copy of a typed 1 Month Notice ending tenancy for cause. I was able to immediately find that this Notice failed to meet the form and content requirements of the Act and that it was of no force or effect. The Notice was not signed, did not include an issue or effective vacancy date or the address of the rental unit. The landlord confirmed that this was the Notice they had served to the tenants.

Initially the tenant's requested an adjournment which would allow them to obtain evidence from the City of Nanaimo. No testimony was provided as to what information was required that could not have reasonably been obtained since the Application was submitted on September 30, 2010. However, as the evidence sought by the tenants was in relation to the portion of their Application requesting cancellation of the Notice, I determined that an adjournment would serve no purpose. Further, I find that the tenants had ample opportunity to obtain copies of any relevant legislation or bylaws prior to this hearing.

During the hearing the landlord testified that he had just received and opened the tenant's registered mail evidence package. The landlord stated the package included a copy of a 1 Month Notice ending tenancy for cause issued by the landlord in the correct form and containing the required content. The landlord had not supplied a copy of this Notice as part of their evidence package and had not referenced the existence of this Notice until opening the tenant's evidence. The landlord's written evidence indicated that only 1 typed Notice ending tenancy for cause was produced and given to the tenants; the evidence did not mention any other Notice outside of a 10 Day Notice for unpaid rent.

The tenants were surprised by this and responded that they had no recollection of having been given copies of any other Notices, beyond the 1 Month Notice I have found invalid and a 10 Day Notice for unpaid rent, which was of no force, as rent had been paid within 5 days of service.

The hearing proceeded in relation to the balance of the tenant's Application; I found that any other Notice that the landlord might have in their possession would not be considered during this hearing.

#### Issue(s) to be Decided

Are the tenants entitled to compensation in the sum of \$2,000.00?

Are the tenants entitled to filing fee costs?

#### Background and Evidence

This tenancy commenced on June 1, 2010. Rent is \$1,350.00 per month due on the first day of each month. The tenants reside in an upper unit; with occupants in a 2<sup>nd</sup> unit below them. In mid-June, 2010, the basement unit became occupied. The home is owned by the landlord.

The tenants are claiming compensation for the loss of quiet enjoyment of their home in the sum of \$2,000.00. The tenants submitted that from June to September, 2010, the

actions of the occupant of the lower unit have resulted in a loss of value of the tenancy in the sum of \$500.00 per month.

The occupant moved into the lower rental unit in late June, 2010, and first complained to the landlord on June 29, 2010, alleging disturbances caused by the tenants. Over the next 2 months the occupant alleged conflicts including verbal abuse, issues related to parking, playing of drums, smoking, loud music and threats made by the tenants.

The landlord's evidence indicated that the allegations were investigated, that the tenants were given opportunities to adjust their behaviour and that the final solution was the issuing of a September, 2010, 1 Month Notice, which I have found to be of no force or effect as it failed to meet the provisions of section 52 of the Act.

The tenants submitted that the landlord and their witness, the occupant who has made the complaints, have conspired to have them removed from their home. The tenants have felt their tenancy is under threat and that the landlord has not given them equal treatment, when responding to the occupant's complaints and allegations. The tenants testified that there are inconsistencies in the testimony of the occupant and the landlord and that the constant harassment by the occupant has resulted in a loss of enjoyment of their home.

The tenants report that conflict with the occupant commenced as soon as she moved into the unit. The tenants felt disdained by the occupant and that the landlord did not take their concerns into account; only those of the occupant. The tenants felt the occupant was prejudiced against them.

The witness was questioned by both parties and her testimony mirrored that included in her written statement submitted by the landlord as evidence. The landlord's evidence outlined the complaints made and the dates he contacted the tenants; between June 29 and September 13, 2010, the landlord indicated they had made 6 contacts with the tenants, either verbally or written, including the Notice ending tenancy for cause, as a result of disturbances caused to the lower occupant.

### Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Residential Tenancy Branch Policy suggests that a claim for quiet enjoyment must include consideration of factors such as the amount of disruption suffered by the tenants, the reasons for the disruptions, if there was any benefit to the tenants for the

disruptions and whether or not the landlord made his or her best efforts to minimize any disruptions to the tenant. I find this to be a reasonable policy.

There is no evidence before me that the amount of reported disruption caused any loss of value to the tenants. The tenants provided no dates of disturbances caused, no evidence of frequency and no evidence of any discussion with the landlord in an attempt to minimize the claim they are now making.

The occupant moved in toward the end of June 2010; her complaints began almost immediately, resulting in the landlord making a reported 6 contacts with the tenants between June 29 and September 13, 2010. The tenants submitted that the value of their tenancy was reduced by \$500.00 per month, yet the tenants have not proven they took any action to mitigate the loss they are claiming, as required by section 7(2) of the Act, which provides:

*(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

From the evidence before me I find, on the balance of probabilities, that the tenants have had conflict with the occupant of the lower suite but that their claim for loss related to the quiet enjoyment of their rental unit as the result of disturbances caused by the occupant have not been to such a degree that compensation would be appropriate.

If the disturbances reported by tenants had been so severe as to reduce the value of their tenancy by almost 40%, I find that the tenants' failure to attempt any mitigation by placing their concerns in writing to the landlord or any other steps to minimize the loss they are now claiming indicated that the disturbances were of little consequence. Therefore, I find that the tenants have failed to mitigate the loss they are claiming and that the sum they are claiming is not verified by the evidence before me.

I have found that the only Notice before me was the 1 month Notice ending tenancy for cause submitted by the landlord in their evidence package and that on the basis of that Notice I have determined that it was not of any force and that the tenancy would continue. The parties were also informed that if another Notice is in existence then both parties were at liberty to take whatever action they found necessary under the Act.

I have not made any finding in relation to any matter that may be brought forward as part of an Application to end this tenancy for cause. I have found that the tenants have not suffered a loss and that they are not entitled to compensation. Any future matters related to the ending of the tenancy must rely upon the facts presented at that time.

As the tenants felt compelled to dispute the Notice ending tenancy, which I have found is of no force, I find that they are entitled to filing fee costs and may deduct \$50.00 from the next month's rent owed.

Conclusion

The claim for compensation is dismissed.

The Notice issued for cause is of no force or effect and I order that this tenancy continue until it is ended in accordance with the Act.

The tenants are entitled to filing fee costs in the sum of \$50.00 which may be deducted from the next month's rent owed.

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: November 05, 2010.

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Dispute Resolution Officer