



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      CNC, FF, LRE, OLC

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This is a request to cancel a Notice to End Tenancy, a request for an order requiring the landlords to comply with the act, a request to suspend or set conditions on the landlords right of entry to the rental unit, and request that the landlords bear the \$50.00 cost of the filing fee that was paid for the application for dispute resolution.

### Background and Evidence

On December 28, 2010 the landlords served the tenants with a Section 47 Notice to End Tenancy as follows:

Tenant or a person permitted on the property by the tenant has:

- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

- Put the landlord's property at significant risk.

Tenant has caused extraordinary damage to the unit/site or property/park.

Tenant has not done required repairs of damage to the unit/site.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlords testified that:

- The Notice to End Tenancy has been given for numerous reasons.
- The tenants agreed to a separate rental of the garage on the property and have failed to comply with that agreement.
- The male tenant broke a window in a downstairs suite, and did not repair that window.
- The tenants caused a power failure by improperly installing a light fixture.
- The tenants removed carpet in the rental unit without permission and have ignored requests to replace it.
- The tenants have more cats in the rental unit than they were originally allowed and have failed to remove the extra cats.
- The tenants restricted the landlord's access when they attempted to do an inspection of the rental unit.
- The male landlord was in a serious accident in August of 2010, and the stress caused by this tenancy is very difficult for the landlord.
- They had been contemplating taking action against the tenants for quite some time due to the ongoing problems however had decided work with the tenants to try and resolve the issues, however since the tenants took them to dispute resolution they decided to take action.

The landlords therefore request that the Notice to End Tenancy be upheld and that this tenancy end as soon as possible.

The tenants testified that:

- They believe the Notice to End Tenancy has been given in retaliation because they took the landlords to dispute resolution.
- They won a monetary order against the landlords in a hearing that was held in early December 2010, and shortly after that the landlord started making demands against them, and subsequently issued the Notice to End Tenancy on December 29, 2010.
- When the electrical problem occurred in July of 2010 the electrician told them that the problem was an electrical outlet and had nothing to do with the light fixture they had installed.
- The landlords had given them permission to remove the carpets as long as they did it properly, and was fully aware of the fact that they had removed the carpets.
- The garage is a separate issue that is being dealt with in another hearing in April of 2011.
- The male tenant did not break a window in another tenant's suite, and in fact he had knocked on the window and the other tenant knocked back very hard and broke the window herself.
- The landlords have been aware of the cats in the rental unit and in fact took a pet deposit because of the cats and no restriction was put on the number of cats allowed.
- There has been no illegal sublet of the rental property as well, the landlords were aware from the beginning when the male tenant moved into the rental unit, and in fact that is when the pet deposit was taken.

They fully believe that this action by the landlord has been taken because they stood up for their rights and the landlords are retaliating. They therefore believe the Notice to End Tenancy should be cancelled.

### Analysis

It is my decision that the landlords have not met the burden of proving their reasons given are ending this tenancy.

The garage was not rented as a part of this tenancy, and is the result of a separate agreement not related to this tenancy. Therefore the landlords cannot end this tenancy over a dispute resulting from that agreement.

It is also my decision that the landlords have not shown that the tenants have caused extraordinary damage to the rental unit, or breached a material term of the tenancy agreement.

The landlords have been aware of the broken window, the carpets, the cats, electrical issue, and the fact that the male tenant moved into this rental unit, for a long time now, and it does appear that this action has been taken in retaliation to the tenant's application for dispute resolution.

The landlords claim that they sent a letter to the tenants in July of 2010 outlining their concerns however the tenants testified that they never received that letter, and I accept that testimony.

In the landlords own testimony they stated that they had taken this action at this time because the tenants had filed dispute resolution claim against them.

### Conclusion

The section 47, 1 month Notice to End Tenancy dated December 28, 2010, is hereby cancelled and this tenancy continues. I further ordered that the landlords bear the \$50.00 cost of the filing fee and therefore the tenants may make a one-time \$50.00 reduction from future rent payable to the landlords.

I make no orders suspending or setting conditions on the landlords right to enter the rental unit, the landlords have the right to enter as long as they comply with the conditions required under the Residential Tenancy Act.

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: January 19, 2011.

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Residential Tenancy Branch