



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

**Dispute Codes**      CNC, FF

### **Introduction**

This hearing was convened by way of conference call to deal with the tenants' application 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.

The landlord company was represented by an agent, who also called a witness. Both tenants also attended the conference call hearing. The parties and the witness all gave affirmed testimony, and the parties were given the opportunity to cross examine each other and the witness on their testimony. All evidence and testimony provided has been reviewed and is considered in this Decision.

### **Issue(s) to be Decided**

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

### **Background and Evidence**

The parties agree that this fixed-term tenancy began on July 15, 2008 and is set to expire on June 30, 2011. Rent in the amount of \$1,850.00 per month is payable in advance on the 1<sup>st</sup> day of each month, and there are no rental arrears. On July 2, 2008 the landlord collected a security deposit from the tenants in the amount of \$900.00.

The landlord's agent testified that at the beginning of February, 2011 the tenants had asked the landlord's agent by email if they could break the lease early. The owner agreed and the tenants then gave notice to vacate by the end of May, 2011. The owner then decided to sell the unit and the names and the phone number of the tenants was given to a realtor to show the property. She stated that the tenants put restrictions on showing the rental unit, such as, no children would be permitted, no photographs could be taken in the unit, no open houses, and one tenant would always be present during showings. The email from the tenant in early February also stated that repairs needed to be completed on the rental unit which should be attended to sooner rather than later.

The landlord's agent served the tenants with a 1 Month Notice to End Tenancy for Cause on March 24, 2011 by regular mail. A copy of that notice was not provided in advance of the hearing, however, the landlord's agent testified that it contained an expected date of vacancy of April 30, 2011 and stated that the reasons for issuing the notice were: "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord," and "Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk."

The landlord's witness was the realtor who had the listing for the sale of the property, and testified that the unit has only had one viewing since it was listed on March 17, 2011, and the home has not sold. She further testified that access was never denied by the tenants. The landlord prepared a notice of entry and the realtor and tenant initialled the document, which was a schedule for showings. She stated that several emails were exchanged between herself and the tenants which were negotiations prior to the agreed schedule being prepared. A copy of that Notice of Entry, dated March 16, 2011 was provided in advance of the hearing. The document states that the schedule within it contains the times that showings may commence, however, showings may not occur for all times and dates, and that if the tenants were not home during those times, a licensed real estate agent would accompany clients for viewings. The times were Saturdays between 1:00 and 3:00 p.m.; Tuesdays between 10:00 a.m. and 2:00 p.m., and Thursdays between 10:00 a.m. and 2:00 p.m., until the unit is sold.

The witness also testified that the tenants had made comments in emails prior to the signing of the agreed schedule. One of which was an email dated March 10, 2011 wherein the male tenant stated to the realtor that the sale of the house and contractors coming and going from the rental unit was not part of the deal, and that the tenants would only provide the very bare minimum of access. No lock boxes would be allowed, no photographs, limiting access to 3 times per week based on what is convenient to the tenants and does not disturb their family time, the tenants would not allow access without one of the tenants being on the property to supervise, no open houses, and that contractors provide proof of insurance for their operations who must be bonded. The email also states that "Without some form of real compensation, we are not interested in providing any extras for the owner." The email suggests that "Most owners will provide a couple months free rent in exchange for tenant cooperation."

Another email from the male tenant to the real estate agent was also provided in evidence which states that the tenants wanted the owner to "sign off on waiving his right to any damage claims against us while the house is being entered by his agents and contractors. There will be no showings until this legal issue is resolved." The email

again requests compensation from the landlord and sets restrictions on showing the rental property and on contractors entering to complete repairs.

The female tenant testified that she and her husband have complied with every request to show the house and to allow contractors in to complete repairs and measure rooms. She stated that the landlord's agent told her that 3 access showings per week were reasonable.

She also testified that the emails were negotiations prior to the agreed schedule for access to the unit. Once the schedule was prepared, edited and signed, the tenants never denied access to realtors or to the landlord. The tenants have looked after the house and treated it as their own, and when they emailed the landlord's agent on February 2, 2011 asking to end the tenancy early, the email also outlined repairs required to assist the landlord.

At the conclusion of the hearing, the tenants confirmed that they would be moving from the rental unit on May 31, 2011.

### **Analysis**

There is nothing in legislation that requires a landlord to compensate a tenant for accessing a rental unit. The *Residential Tenancy Act* states that a landlord must give the tenant at least 24 hours notice, and the notice must give the reason for the entry, which must be reasonable. I find that the schedule reached by the parties is reasonable, but I do not find that the tenants' restrictions are reasonable, nor do I accept the tenant's evidence that most owners give a couple of months free rent in compensation for tenant cooperation; the tenant is required under the *Act* to cooperate. If the tenants find that the entry is not reasonable, the tenants are at liberty to apply for dispute resolution for an order that the landlord either compensate the tenant or restrict the number of showings. In this case, the tenants have not applied for compensation or for an order restricting the number of showings.

The landlord has served a notice to end the tenancy however I cannot find in the circumstances that the tenants have placed the property at significant risk. A significant risk refers to damage to the property, not to whether or not the landlord would be successful in selling the house.

With respect to the landlord's claim that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord, I cannot find that any other occupants were disturbed, nor can I find that the landlord suffered any disturbance. The landlord's witness testified that there has only been one showing since the house was

listed, and the landlord has therefore not suffered any potential loss. Therefore, the notice to end the tenancy cannot be upheld.

In the circumstances, I find that the tenants have not been as reasonable as they believe. The landlord has a right to sell the house without any requirement to compensate the tenant, and the tenant has not lost a right to quiet enjoyment if the schedule completed by the parties is adhered to. I further find that the landlord has already compensated the tenants by allowing them to move from the rental unit without the necessity of paying rent until the end of the fixed term.

Because the tenants have been successful with their claim, the tenants are entitled to recovery of the \$50.00 filing fee for the cost of this application.

### **Conclusion**

For the reasons set out above, the notice to end the tenancy is hereby cancelled.

I further order that the landlord pay to the tenant the sum of \$50.00 for recovery of the filing fee for the cost of this application. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

I further order that the tenants comply with the *Residential Tenancy Act* by allowing reasonable access to the rental property for contractors and for real estate viewings upon being given 24 hours notice, and that the parties continue to abide by the schedule agreed to by the parties and the real estate agent on March 16, 2011. The tenants are not permitted by law to deny access to a contractor who is not bonded, nor are the tenants permitted to require that contractors provide proof of insurance, nor are the tenants entitled to put restrictions of no children viewing the property with their parents who are accompanied by a real estate agent.

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: April 29, 2011.

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Residential Tenancy Branch