



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, LAT, RR, O

### Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for cause, money owed or compensation due to damage or loss, allow the tenants to change the locks, allow the tenants to reduce rent for repairs and other.

Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

### Background and Evidence

This tenancy began November 15, 2010, with monthly rent of \$925.00 and the tenants paid a security deposit of \$462.50.

On March 22, 2012 the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause: the tenant is repeatedly late paying rent.

At the outset of the hearing the tenant's sought an adjournment to have an advocate present, as delaying this hearing for 3 to 4 weeks would be prejudicial to the landlord, this request was denied. The advocate was contacted by phone to participate in the hearing however the advocate stated she could not stay on the line as she was due back in court.

The tenants also demanded to know under what authority or license I was conducting this hearing were advised that as a Dispute Resolution Officer I was employed by the Residential Tenancy Branch, Office of Housing and Construction Standards, Province of British Columbia and was given authority to act in this position by the Executive Director.

The tenants at the start of the hearing and again part way through the hearing were given clear direction that they could not record the hearing on their cell phones. The tenants were advised of the proper procedure to have a hearing recorded.

The landlord testified that the tenants are consistently late in pay the rent and have paid rent late October, November, December 2011 and January, February, March 2012. The tenants countered this with their testimony and evidence that shows the October and November 2011 rent as having been paid on time. The tenants stated that the January 2012 rent was late due to the holiday as January 1 and 2, 2012 the property management office was closed. The landlord stated that the tenants should have known to contact the property management office December 29 or 30 to ensure payment of their January rent by the 1<sup>st</sup>. The tenants countered by stating that the property management company was typically very good about putting up notices in the building if their office was going to be closed but that on this occasion they had not seen any such notices posted. The landlord noted that after the rent was paid late in February 2012 the tenants were provided with a warning letter that rent was due on the 1<sup>st</sup> of each month without exception and that a notice to end tenancy would be served upon the tenants if rent was paid late in the future. The March 2012 rent was then paid on March 2, 2012 and the tenants served with a notice to end tenancy for cause.

The tenants stated that on October 1, 2011 they received a Notice of Rent Increase dated September 28, 2011 under their apartment door. This rent increase was to be effective January 1, 2012 and reflects a rent increase of \$39.77 per month. The tenants stated that the *Act* is very clear in that a tenant must be given 3 clear months notice for a rent increase however they were only given 2 clear months notice. The landlord stated that 1 day should not make a difference in the effectiveness of the notice and referred to how 'effective end of tenancy dates' self correct on notices to end tenancy.

The tenants stated that their peace and quiet enjoyment has been disturbed throughout the entire 14 months of their tenancy due to the actions of another tenant in the building. The tenants referred to a letter dated January 4, 2012 that was written by the tenants at the landlord's request, regarding the actions of the tenants causing the disturbances. The tenants stated that this tenant was always outside their balcony and bedroom window yelling obscenities and making threats however prior to the January 2012 letter they had never contacted the landlord in writing about this matter. The tenants stated that they often had conversations with the landlord about the problems these tenants were causing and the landlord would always advise them that they were working on it.

The landlord responded by stating that these tenants were served with a notice to end tenancy and the landlord successful in obtaining an order of possession and writ of possession for the rental unit. The tenants acknowledged that the tenants had been seen vacating the rental unit the past few days.

The tenants also stated that their peace and quiet enjoyment has repeatedly been disturbed as the locks were never changed on their rental unit and someone has been entering their suite when they are out. The tenants stated that the sliding bedroom window is also so loose in its track that someone has been lifting it out of the track and gaining access into their rental unit. The tenants stated that small amounts of money have gone missing as well as food items. The tenants stated that they know the tenant next door still has a key from when she used to water the previous tenants plants. The tenants acknowledged that because they were coming to this hearing that they had not contacted the landlord about this concern and had only contacted the police. The tenants also referred to an incident in late February 2012

where an electrician required access to their rental unit and that when they came home someone had removed and replaced the door handle on the rental unit and left a plumbing p-trap in a bag on their floor. The tenants again acknowledged that they did not contact the landlord to see who had entered their rental unit or why.

The landlord agreed in the hearing that they would contact the property management company and request that the lock on the tenant's door be re-keyed for the tenants.

The tenants also brought up matters related to discrimination and violations of the Privacy Act however this office does not have jurisdiction over such matters.

### Analysis

Based on the documentary evidence and testimony of the parties I find that there is insufficient evidence to uphold the Notice to End Tenancy for Cause.

The landlord has not provided sufficient evidence of the tenants having paid the rent late repeatedly as the landlord's ledger shows late rent payments for which there are receipts issued on the 1<sup>st</sup> of the month IE: November 2011. I also allow the fact that the tenants tried to pay the January 2012 rent on time however the property management office was closed due to the New Year's holiday. Therefore in the past 6 months the tenants have paid rent late on 2 occasions: February and March 2012 and that is not enough to uphold this notice.

Accordingly, the notice to end tenancy is hereby set aside and the tenancy continues in full force and effect.

In regards to the landlord's Notice of Rent Increase dated September 28, 2011, for this notice to be effective January 1, 2012 the tenants had to be in receipt of the notice no later than September 30, 2011. With no direct testimony from the property management company on when and how this notice was delivered to the tenants, I accept the tenant's testimony that they did not receive this notice until October 1, 2011. Therefore the landlords September 28, 2011 notice will be set aside and the landlord will be required to serve the tenants with a new notice of rent Increase and provide the tenants 3 clear months notice prior to the increase taking effect. **The \$39.77 rent increase that the tenants have paid for January, February, March and April 2012 will be refunded to the tenants in the form of a \$159.08 deduction on future rent.**

In regards to the disturbance of the tenant's peace and quiet enjoyment being disturbed by the tenants in the building who would yell obscenities, threaten and yell directly outside the tenant's rental unit, I do not find that the tenants have met the burden of proving that they are entitled to \$100.00 per month compensation for 14 months. The tenants have not established that the landlord was remiss in dealing with these tenants and the only letter to the landlord regarding this concern is a letter written at the landlord's request in January 2012. It must also be noted that the landlord, under the new owners, has moved forward with removing

these tenants from the building in a timely manner. Therefore the tenants request for compensation in relation to this matter is dismissed without leave to reapply.

In regards to the disturbance of the tenant's peace and quiet enjoyment being disturbed by unauthorized entry, I hereby order the landlord to re-key the lock on the tenant's door within the next 7 days and that a locking mechanism be provided to the tenants for the sliding bedroom window. As the tenants have not contacted the landlord regarding this matter the tenants are not entitled to compensation for the landlord failing to complete required repairs which resulted in a loss of their peace and quiet enjoyment and in future it would do the tenants well to contact the landlord when such a security breach at the building occurs so that the landlord can respond in a timely manner. The same applies to the February 2012 entry into the tenants unit by someone unknown as communication directly with the landlord would have answered any questions or concerns the tenants had. Therefore the tenants request for compensation in relation to these matters is dismissed without leave to reapply.

### Conclusion

I therefore allow the tenant's application and set aside the landlord's 1 Month Notice to End Tenancy for Cause dated March 22, 2012 with the result that the tenancy continues uninterrupted.

I also set aside the landlord's Notice of Rent Increase dated September 28, 2011 and tenants may deduct one time, \$159.08 from future rent owed to the landlord for recovery of the invalid rent increase that has been paid January, February, March and April 2012.

The balance of the tenant's application is dismissed without leave to reapply.

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 24, 2012

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Residential Tenancy Branch