



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the tenants for an order cancelling a notice to end tenancy for cause; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application. The hearing did not complete on the first scheduled date and was adjourned for a continuation of the testimony. The landlord and all three tenants attended on the first day of the hearing, and the landlord and 2 of the tenants attended on the second day. All parties gave affirmed testimony and the landlord and tenants provided evidence in advance of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to cross examine each other on the testimony given and evidence provided, all of which 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?
- Are the tenants entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?

### Background and Evidence

This month-to-month tenancy began on December 1, 2011 and the tenants still reside in the rental unit. Rent in the amount of \$1,500.00 per month is payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. The rental unit is an apartment in a condominium type of complex.

At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$750.00, as well as collecting \$20.00 per month from the tenants for a pet damage deposit, which is still being collected on a monthly basis. The landlord testified that the parties had a verbal agreement that the tenants would pay \$10.00 per month per dog as a pet damage deposit until the end of the tenancy.

The landlord also testified that no written tenancy agreement exists, and when asked during cross examination if the tenants were told that a 6 month lease was required by the strata, the landlord disagreed and stated that the tenants were just told to fill in a form, and denied that any lease or tenancy agreement was ever signed by the parties.

The landlord also testified that the tenants will not allow the landlord to inspect the rental unit and constantly have an excuse or reason to deny the landlord entry to the rental unit. The parties had verbally agreed to do an inspection because the tenants had complained about mould in the rental unit. The landlord eventually served written notice to the tenants to inspect and when the landlord arrived, one of the tenants took the landlord directly to the master bedroom and the landlord saw mould growing from one side of the window sill to the other. All other doors in the rental unit were closed. Another tenant walked out of another bedroom, and the third tenant came out from another in full attack mode screaming and punched the wall. The tenant went after the landlord and was held back by the other tenants. The wall was punched so many times the landlord was surprised no bones were broken in the tenant's hand.

During cross examination the landlord testified that the tenant asked the landlord to keep noise and voice levels down because one of the tenants had a migraine, and admitted to being very loud during the visit. The landlord further agreed that when the tenants were called to do the inspection initially the tenant asked to wait until the following day because the other tenant had a migraine but the landlord insisted on attending within the next 15 minutes. The landlord stated that the tenants had given excuses for 4 months by that point.

The landlord also testified that the landlord will be moving back into the rental unit.

The landlord further testified that the 3 tenants have moved in another tenant without the landlord's consent. The landlord had been to the apartment prior a few times and the fourth person answered the door wearing slippers and lounge clothing. Also, during the second week of February, 2012 the landlord called and asked one of the tenants if there was a fourth person living there. The tenant admitted there was and stated that the person was ill and the tenants were caring for that person.

The landlord served a 1 Month Notice to End Tenancy for Cause upon the tenants by serving one of the tenants personally on March 18, 2012 with police assistance. Neither party provided a copy of the notice for this hearing, but the landlord testified that it was dated March 9, 2012 and contained an expected date of vacancy of April 30, 2012. The landlord did not have a copy to refer to during the hearing but stated that the first 2 or 3 reasons set out on the form were checked off, one of them being that the tenants have allowed an unreasonable number of occupants in the rental unit, significantly interfered

with other occupants or the landlord, seriously jeopardized the health or safety of another occupant or the landlord, and put the landlord's property at significant risk, although the landlord does not recall whether or not the latter box was checked off.

The landlord was very agitated and yelled a lot during the course of the hearing, and expressed frustration with the tenants, the tenancy and the hearing process.

The first tenant testified that on March 9, 2012 the landlord came by to look at the mould and upon arrival 2 of the 3 tenants answered the door. Instantly the landlord got very angry and screamed loudly. The tenant asked the landlord repeatedly to keep a low voice because the other tenant had a migraine. The tenant took the landlord to show the window and the parties agreed that it was from condensation from the window, and the tenant stated that now that the landlord had seen it, the tenant would clean it up. The landlord kept yelling and screaming that the tenants had made too many excuses for the landlord to complete an inspection and demanded to do an inspection that moment. The landlord also told the tenant with the migraine that the tenant was immature and asked the tenant to leave. The tenant did not punch the wall at all, but hit it once with an open hand on a door frame.

The tenant also testified that the landlord had lived in the rental unit prior and was asked to change the mailing address because the landlord claimed that some mail delivered to the rental unit was missing. The landlord told the tenant that the landlord was receiving a grant but in order to get it, the landlord was required to use the rental unit address and retained the right to do so. The landlord continued to yell that the house belonged to the landlord, not the tenants, and the landlord could do an inspection whenever the landlord wanted and as often as the landlord pleased. The landlord was told that mail could be picked up from a drawer in a table outside, which was agreed, but also told the tenants that people were watching and the landlord would "get someone." The tenant is not sure how it happened, but shortly thereafter all four tires on the tenant's vehicle were slashed in the underground parking area, and the tenant checked with the building maintenance person and neither of them found any evidence of a break-in. The maintenance person told the tenant it appeared to be from inside the complex.

The tenant further testified that the police accompanied the landlord when the landlord arrived to do the inspection. The police officer went into the residence and told the landlord that the place looked good and an inspection wasn't necessary. The police officer served the other tenant with the notice to end tenancy, and told the tenant to dispute it; then the officer left.

The tenant also testified that the fourth person in the rental unit is a friend who is ill. The friend cannot stay alone and when there is no one at the friend's own residence, the friend stays with the tenants. The longest the friend has stayed at the rental unit is one week.

The tenant testified that the landlord caused an unreasonable disturbance in the tenant's rental unit. The landlord was asked repeatedly to keep a low voice, then was asked to leave and refused. The tenant asks that the notice to end tenancy be cancelled. The notice was served on March 18, 2012 and the tenants filed the application for dispute resolution on March 20, 2012.

Shortly after the tenant commenced testimony the landlord began to sob loudly into the phone. The sobs became quieter but the landlord was eventually asked to remain silent. The landlord disconnected from the hearing and dialed back in about a minute later. The tenant's testimony continued during the landlord's absence. The landlord again disconnected from the phone and dialed back in about 3 minutes later, and again the tenant's testimony continued in the absence of the landlord. When the landlord connected the last time, the landlord stated that the phone was a cell phone and the landlord had lost the connection.

Another tenant testified to having fibromyalgia and frequent migraines. The landlord is aware of the tenant's condition and history and was understanding at first.

The landlord had accused the tenants of returning mail belonging to the landlord or keeping it, and was yelling at the other tenants about it during the inspection, and the tenant hit the wall with an open hand once, and did not punch the wall at all. The landlord made accusations daily by phone or text. The tenants told the landlord they would hold mail until the landlord's address was changed. From December, 2011 to February, 2012 the landlord arrived unannounced to get mail and promised to retrieve items from the dining room, but never did. The parties also agreed to put mail in a drawer in a table in the lobby, but the landlord continued to accuse the tenants of returning or keeping mail.

The tenant testified that they love the rental unit and would not cause damage, and have never denied the landlord an inspection; the landlord never asked. If the landlord had asked, it would not have been refused. The landlord was there to get mail and an inspection would have been agreed to without 24 hours written notice. The tenants have been keeping an eye on the mould issue since it was shown to the landlord.

The tenant further testified that the fourth person mentioned by the landlord does not reside in the rental unit, and the landlord has been told that the person is sick and stays

in the rental unit for sometimes 2 or 3 days at a time but has a home with a cousin in another municipality. The landlord has simply made assumptions.

The tenant also testified that a lease was signed at the outset of the tenancy which included a term that the tenants would pay \$20.00 per month for a pet damage deposit for 2 dogs, but the tenants did not receive a copy.

The final tenant testified to agreeing with the other two tenants' testimony and added that the tenants love the rental unit but the landlord lost control when the tenants asked the landlord to change the landlord's mailing address.

### Analysis

Firstly, with respect to the tenants' application for an order cancelling a notice to end tenancy for cause, I find that the tenants have applied for such an order within the time permitted under the *Act*. I have not received a copy of the notice and the landlord was not able to clearly establish the grounds or any other information set out in that document. The *Act* species how a tenancy ends, and if the tenants dispute a notice to end tenancy for cause, the onus is on the landlord to prove the grounds. One of the tenants testified that the first ground was that the tenants had allowed an unreasonable number of occupants in the rental unit. The landlord testified that the tenants have obviously moved in another occupant, which the tenants deny. The tenants must consider the inference a landlord might draw from a guest staying at the rental unit so often. However, the landlord expressed agitation and frustration from what the landlord believes to be lies by the tenant, but the landlord has not provided any testimony or documentation to satisfy me what would be an unreasonable number of occupants in the rental unit. The landlord was insistent in testimony that the parties did not sign a tenancy agreement, and therefore there is no evidence that the parties agreed that an additional guest was prohibited. Whether the tenants' friend lives in the rental unit or not is not clear but I find that the landlord has failed to establish what is reasonable and what is unreasonable.

The tenant also testified that the notice to end tenancy contained a ground that the tenants significantly interfered with other occupants or the landlord. The tenants testified that the landlord is welcome to inspect the rental unit but must be respectful. The tenants also testified that during the inspection the landlord caused a disturbance, and I accept that testimony. The tenants also ask that the landlord provide 24 hours written notice. The *Act* requires that the landlord provide no more than 30 days and no less than 24 hours written notice to inspect a rental unit, and that notice must include the date and time of the inspection, which must be between 8:00 a.m. and 9:00 p.m.

unless the parties otherwise agree, it must state the reason for the inspection, which must be reasonable, and the landlord may inspect a rental unit monthly with that written notice delivered each time.

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The tenants have no right to deny the landlord access to the rental unit if the notice has been delivered. I find that the landlord has failed to establish that the tenants were served with any prior notices to inspect the rental unit, other than the inspection that took place when the tenants showed the landlord the mould on the window sill.

I understand from the testimony of the landlord that the landlord is concerned about the condition of the rental unit, however the landlord is also required under the *Act* to provide the tenants their right to quiet enjoyment. The landlord testified during the hearing that the rental unit is the landlord's, and one of the tenants testified that the landlord expressed the same thing to the tenants. Once a rental unit is rented to a tenant, the rental unit is the home of the tenants, not of the landlord. Also, a tenancy agreement exists whether or not it is put in writing, and if not in writing, the agreement contains standard terms. Therefore, the parties have a contract wherein the tenants

pay rent and the landlord allows the tenants their right to quiet enjoyment of the rental unit. The *Act* states:

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

In the circumstances, I find it necessary to order the landlord to comply with the *Act* and allow the tenants their right to exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29 of the *Act*. I also order the tenants to allow the landlord entry to the rental unit in accordance with Section 29.

With respect to the ground in the notice to end tenancy that the tenants have put the landlord's property at significant risk, I understand that the landlord was shocked and very concerned about the mould on the window sill. However, I also accept the testimony of the tenants that they left the mould there specifically to show the landlord a problem caused by condensation in that window. No parties expressed any concern about any other windows or damage, and the tenants testified that they are keeping an eye on the situation since showing it to the landlord. I don't find that to be unreasonable, nor do I find that the landlord has established that the tenants have put the landlord's property at risk.

The parties also testified that a verbal agreement exists whereby the tenants pay the landlord a pet damage deposit in the amount of \$10.00 per month per dog, and the tenants have 2 dogs. The *Residential Tenancy Act* states that parties may not contract outside the *Act*, and that any attempt to avoid or contract outside the *Act* is of no effect. The *Act* further states that:

**20** A landlord must not do any of the following:

- (a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;
- (b) require or accept more than one security deposit in respect of a tenancy agreement;

- (c) require a pet damage deposit at any time other than
  - (i) when the landlord and tenant enter into the tenancy agreement, or
  - (ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;
- (d) require or accept more than one pet damage deposit in respect of a tenancy agreement, irrespective of the number of pets the landlord agrees the tenant may keep on the residential property;
- (e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

There is no discretion under the *Act*; the landlord cannot require a pet damage deposit except at the commencement of the tenancy or when a tenant acquires a new pet, or accept more than one pet damage deposit regardless of the number of pets. Therefore, I must order that the landlord discontinue the monthly collection of \$10.00 per month per pet, and I find it reasonable in the circumstances that the amount of pet damage deposits collected by the landlord during the course of this tenancy to date is the amount of pet damage deposit collected and held in trust by the landlord until the end of the tenancy.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$50.00 filing fee for the cost of filing, and I order the tenants be permitted to deduct \$50.00 from the next month's rent payable.

### Conclusion

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

I order the landlord to comply with the *Residential Tenancy Act* by:

1. Discontinuing the collection of a pet damage deposit from the tenants, and the pet damage deposits collected by the landlord to date shall be the total amount of pet damage deposit collected for the duration of the tenancy;
2. Allowing the tenants their right to exclusive possession of the rental unit subject to the landlord's right to enter in accordance with Section 29; if it is disruptive to the tenants that the landlord has not changed the landlord's mailing address, the landlord has an obligation to change that mailing address or provide some



means to ensure that the collection of the landlord's mail by the tenants is not disruptive to the tenants;

3. By providing the tenants with at least 24 hour's written notice to inspect the rental unit as set out in the *Act*, and by conducting such inspections in accordance with the *Act*, and by completing the inspections without unreasonable disturbance.

I further order that the tenants comply with the *Act* by allowing inspections to take place in accordance with notices issued by the landlord.

I further order that the tenants be permitted to deduct \$50.00 from the next month's rent payable.

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 16, 2012.

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Residential Tenancy Branch