



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants requesting an order to cancel a one month Notice to End Tenancy issued for alleged cause and to recover the \$50.00 filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that both parties provided evidence less than five days before the hearing. I have not considered this late evidence.

### Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?

### Background and Evidence

This tenancy began in September of 2003, with the parties entering into a written tenancy agreement. One of the terms of the tenancy agreement is that the rental unit will be occupied by two adults and no children.

The Tenants wrote to the Landlords in October of 2003, and set out some repairs required in the rental unit. In November of 2004 the Tenants wrote to the Landlords and explained some work was required on the bathtub surround.

In December of 2007 the Tenants wrote to the Landlords and again set out there are problems with the bathtub surround, calking and sealing. In this letter the Tenants inform the Landlords they are expecting their first child.

The Tenants wrote again in March of 2008 and explained the condition around the bathtub has worsened. It appears from the evidence provided that the Landlords did not address the bathroom problems.

In December of 2011, the Landlords wrote the Tenants and expressed regret that they had to issue a Notice to End Tenancy for the Landlords' use of the rental unit. The Landlords had used a two month Notice to End Tenancy, scratched out the "2" and replaced it with a "4". I note that the Act does not recognize a 4 month notice to end tenancy, but rather a 2 month.

In a letter to the Tenants the Landlords say they intend to "renovate" the rental unit "... and/or have it occupied by a close family member." In the two month Notice to End Tenancy, dated December 28, 2011, the Landlords indicate the reasons to end the tenancy as the rental unit will be occupied by a close family member and that the Landlords have all the necessary permits and approvals required to renovate the rental unit in a manner that requires it be vacant.

The Tenants testified they accepted the two month Notice to End Tenancy and plan to vacate the rental unit on the indicated effective date of the Notice, May 1, 2012.

After they first received the notice, the Tenants requested that the Landlords allow them to remain in the rental unit until June of 2012, as they were expecting their third child. However, the Tenants did not receive any written or other confirmation from the Landlords that they allowed this extension. Therefore, the Tenants continued to plan on vacating the rental unit on May 1, 2012.

On or about February 23, 2012, the Landlords wrote the Tenants and explained that the hydro bill has increased greatly, as there are now four occupants living in the rental unit. I note the Tenants had a second child and were expecting their third at this time.

In this letter, the Landlords request that the Tenants pay 20% of the hydro bill to cover the increased usage.

On or about February 24, 2012, the Tenants wrote a reply to the Landlords. The Tenants decline to pay the utility bill and advise the Landlords they are attempting to

alter the terms of the tenancy agreement unlawfully. The Tenants explain they are vacating the rental unit on May 1, 2012.

The Tenants go on in this letter and explain to the Landlords that because the Landlords issued a two month Notice to End Tenancy, the law requires the Landlords to compensate the Tenants with the equivalent of one month of rent. This is the requirement found under section 51 of the Act.

On March 9, 2012, the Landlords issued the Tenants a one month Notice to End Tenancy for cause, stating that the Tenants have allowed an unreasonable amount of occupants, have unreasonably disturbed other occupants or the landlord, and have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The Landlords re-served this same Notice to the Tenants later in the month with a different date. This decision deals with both of these notices.

I note there is no evidence of written warnings being given to the Tenants prior to the March 9, 2012, Notice to End Tenancy being issued. The Landlords allege they gave the Tenants verbal warnings prior to this. After the March 9, 2012 Notice, the Landlords wrote to the Tenants with warnings, but did not give the Tenants a reasonable amount of time to address the alleged problems.

I also note that the advocate for the Landlords, who is the son of the Landlords, lives in a rental unit on the lower portion of the rental unit property. This person testified he does not reside at this unit all the time.

The Landlords testified that they feel the Tenants have breached a material term of the tenancy agreement by allowing four and recently five occupants in the rental unit. The additional occupants are the children of the Tenants.

The Landlords also allege that the Tenants have damaged the rental unit by installing TV cable and using a barbeque on the patio.

The Landlords also allege the Tenants damaged the washer and dryer in the rental unit, which the Landlords initially supplied. The tenancy agreement has a clause that requires the Tenants to repair the washer and dryer. According to the evidence, the Tenants purchased their own washer and dryer when the ones supplied by the Landlords ceased to work. The Landlords allege the Tenants damaged the washer and dryer a couple of years ago.

The Landlords also allege that now the Tenants have more than two adults living in the rental unit there is a lot more noise coming from the rental unit. The Landlords have supplied emails from two people indicating they heard noise from the rental unit.

The Landlords also testified that the renters who lived in the rental unit directly under the subject rental unit vacated their rental unit in January of 2012.

### Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the one month Notice to End Tenancy for cause should be cancelled. I order it cancelled and it is of no force or effect.

The Landlords have done little to enforce the terms of the tenancy agreement during the tenancy. Under the legal doctrine of *estoppel*, the Landlords waived their right to strictly enforce the terms of the tenancy agreement for some years. The Landlords knew as early as December of 2007 that the Tenants were having a child and the child would be living in the rental unit with them.

In order to enforce their rights under the tenancy agreement to limit the number of occupants the Landlords should have taken action earlier, or, they may have written the Tenants and put them on notice that the Landlords wanted to enforce the provisions that were previously waived due to the inaction of the Landlords and given them a reasonable amount of time to address the problems.

I also find that there is insufficient evidence from the Landlords that the Tenants are disturbing other occupants or the Landlords with noise. There is no evidence that the writers of the complaining emails are occupants at the property. Also, there is little particulars from these email writers of what time they visited the rental unit or what type of noise was coming from it.

More importantly, the Landlords have provided no evidence that the residents who lived under the rental unit for a period of time ever complained about noise from the subject rental unit.

During the course of the hearing, and during the tenancy, it became apparent the Landlords have little understanding of their rights and obligations as landlords under the Act. For example, the Landlords tried to shift the onus of responsibility for maintaining the washer and dryer to the Tenants under the tenancy agreement. This is an attempt to contract outside of the Act, and is not a valid term in the contract pursuant to sections

5 and 32 of the Act. In other words, under the law the Landlords were responsible for the repair and maintenance of the washer and dryer and they could not shift this responsibility to the Tenants even with the Tenants' written consent.

For these reasons, I find the one month Notice to End Tenancy is not valid and I order it cancelled.

I note, in *obiter*, that it appears the Landlords simply issued the one month Notice to End Tenancy to avoid having the Tenants receive one month of free rent as required under the two month Notice to End Tenancy, as set out in section 51 of the Act.

Lastly, this tenancy will end at **1:00 p.m. on May 1, 2012**, in accordance with the two month Notice to End Tenancy dated December 28, 2011. The Tenants have already agreed they are vacating the rental unit on May 1, 2012, pursuant to this Notice.

The Tenants are not required to pay rent for the month of April 2012, as this is the equivalent of one month of rent the Tenants are entitled to under section 51 of the Act. Accordingly, any 10 day Notices to End tenancy for unpaid rent issued for April 2012 are not valid.

I also caution the Landlords that under section 51 of the Act they must take steps to use the rental unit for the stated purpose indicated in the two month Notice within a reasonable time from the effective date of the two month Notice, and they must use the rental unit for the stated purpose for at least six months, or they may have to compensate the Tenants a further two months of rent.

I am enclosing a copy of a guidebook to residential tenancies for the use of the Landlords.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 04, 2012.

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Residential Tenancy Branch