



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC FF O

This hearing dealt with the tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act"), seeking to cancel two 1 Month Notices to End Tenancy for Cause, and to recover the filing fee. The application also indicated other relief, however no evidence was provided to support other relief.

Both parties attended the hearing. The hearing process was explained to both parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

### Preliminary Matter

The tenants stated they did not receive any evidence from the landlord prior to the hearing. The landlord disputed the tenants' testimony by stating that she served two pages of evidence personally on August 18, 2012. In the interest of administrative fairness, I advised the landlord that I could accept her evidence through oral testimony as an alternative. I, therefore, did not rely on the documentary evidence from the landlord as a result.

### Issues to be Decided

- Should the 1 Month Notices to End Tenancy for Cause be cancelled?
- Should the applicant tenants recover the filing fee?

### Background and Evidence

The parties agreed that a verbal tenancy agreement began on May 1, 2012. Rent in the amount of \$750.00 is due on the first day of each month. A security deposit of \$375.00 was paid at the start of the tenancy.

The tenants provided oral testimony that a 1 Month Notice to End Tenancy for Cause dated July 22, 2012 indicated the reason for cause as a "family member going to move

in". The parties agree the tenants were subsequently served with a second 1 Month Notice to End Tenancy for Cause on July 30, 2012, with an effective date of August 31, 2012. The second Notice indicated the following reasons for cause:

- Tenant or person permitted on the property has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Tenant or person permitted on the property has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- Tenant or person permitted on the property has put the landlord's property at significant risk.
- Tenancy has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The tenants applied to dispute the Notices within 10 days of receiving the Notices in accordance with the *Act*. The tenants provided a copy of the Notices in advance of the hearing.

The landlord provided the following evidence in support of her claim to end the tenancy for cause. Before the tenants moved in, the landlord states that there were 6-7 police officers at the rental unit looking for the tenants. The landlord affirmed that the tenant later advised her that the police attended due to an ICBC matter and that her daughter advised her not to let the tenants move in, however, she advised her daughter that she would give the tenants a chance.

Before moving into the rental unit, the landlord stated she provided paint to the tenants and the tenants repainted the rental unit, however, made "loud noises and talking." The landlord who lives next door, advised that she could hear them and advised them verbally to be quiet and calm down.

On June 9, 2012, the landlord stated she received a call at 3:00 a.m. and the tenant confirmed that she accidentally dialed the number of the landlord from her cell phone by mistake on that occasion. On August 18, 2012, the landlord stated that the tenant called her on her phone yelling at 6:30 p.m. so the landlord hung up. Early the next morning at 4:22 a.m. on August 19, 2012, the landlord states the tenant called again but did not answer the phone after seeing the tenant's number on the call display. The landlord confirmed that she provided that number to the tenant as a contact number.

The tenant disputed the landlord's testimony by stating that other than the first call which was dialed by accident, she has not called the landlord. Neither party provided phone records or any other evidence such as witness testimony. The landlord stated she could call other tenants in the home, however, she had not arranged for such prior to the hearing.

In the middle of July, 2012, the landlord stated that one of the tenants was banging on the tenants door for her partner to let her in. The landlord states that she walked outside and saw the female tenant banging on the door and was hysterical. The landlord was asked by the female tenant to let her into the rental unit as her partner was not opening the door to the rental unit. The landlord used her key to open the rental unit door. The landlord stated that the tenant went in and removed some of her belongings and asked to borrow a total of \$30.00 which was subsequently repaid by the tenant. At 1:30 a.m., the landlord affirmed that she was awoken by the female tenant knocking at the landlord's door asking for more money.

The tenant agrees that she was locked out of the rental unit and could not awaken her partner who was asleep inside the home, and sought assistance from the landlord. The tenant also agrees that she borrowed money and repaid the landlord. The tenant disputes that she returned at 1:30 a.m. and knocked on the landlord's door or attempted to borrow additional money.

The landlord also stated that the dispute resolution officer could contact the police department and get additional information regarding the tenants and the calls made to the local police department. The landlord claims that the tenant was not being forthright during the hearing regarding the testimony provided. The landlord stated that she did not document any of her complaints to the tenants in writing.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes. **I find** that the parties agree that a month to month tenancy agreement exists.

The landlord served the tenant with two 1 Month Notices to End Tenancy for Cause. The tenants disputed both Notices within the required timeframe in accordance with the *Act*. In the case of disputed notices, the landlord who has served the notices has the burden of proof to prove the reasons set out in the notices at a dispute resolution hearing.

**First 1 Month Notice to End Tenancy for Cause** – The landlord confirmed during the hearing that she served the first 1 Month Notice indicating that a family member was going to move in. **I find** that the landlord used the incorrect notice (such a notice requires a 2 Month Notice and includes as part of that notice, compensation to the tenants equivalent to one month's rent pursuant to section 51 of the *Act*). Therefore, **I cancel** the first 1 Month Notice dated July 22, 2012.

**Second 1 Month Notice to End Tenancy for Cause** – The parties agree that the landlord served the second 1 Month Notice to End Tenancy for Cause (the “second Notice”), on July 30, 2012 with an effective date of August 30, 2012 which corrects automatically under the *Act* to August 31, 2012. The second Notice was disputed within 10 days in accordance with the *Act*. The landlord has the burden of proof to prove the reasons set out in the Notice. The landlord advised the dispute resolution officer to contact the local police department for additional information. The dispute resolution officer is not an investigator and relies on the parties' documentary evidence, oral testimony, witness testimony, applicable legislation, regulations, policy guidelines and case law in making a decision. Both parties were affirmed at the start of the hearing. Both parties dispute portions of the other parties' testimony.

The landlord did not call witnesses to support her testimony, while the tenant disputed that she called the landlord on more than one occasion, the tenant did admit that her call to the landlord at 3:00 a.m. was an inadvertent mistake.

I do not find the landlord has met the burden of proof by proving that the tenants have significantly interfered with or unreasonably disturbed another occupant or landlord, have seriously jeopardized the health, safety or lawful right of another occupant or the landlord, has put the landlord's property at significant risk or has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or landlord.

The right to quiet enjoyment extends to both landlords and tenants, however, temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference may constitute of breach depending on the details of the dispute, however, in the matter before me, the landlord has provided insufficient evidence to prove such a claim. Therefore, I cancel the second 1 Month

Notice dated July 30, 2012. **I find** the tenancy continues until ended in accordance with the *Act*.

I remind the tenants to lock their cell phones when not in use to avoid future unintended calls to the landlord. I remind the landlord to document any future complaints to the tenants in writing and to use the correct Notices under the *Act* in the future.

As the tenants were successful in their application, I grant the tenant the recovery of the filing fee of \$50.00. **I authorize** the tenants to deduct the amount of **\$50.00** from the rent owed for the next month's rent when it is due.

### Conclusion

I cancel the 1 Month Notices to End Tenancy for Cause dated July 22, 2012 and July 30, 2012. I find that the tenancy continues until ended in accordance with the *Act*.

I grant the tenants the recovery of the \$50.00 filing fee and authorize the tenants to deduct that amount from the next month's rent.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

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: August 24, 2012

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Residential Tenancy Branch