



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, CNC, MNDC

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order Cancelling a Notice to End Tenancy for Cause - Section 47;
2. An Order cancelling an additional rent increase – Section 42; and
3. A Monetary Order for compensation - Section 67.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions. During the Hearing, the Tenant withdrew the claim for compensation.

### Issue(s) to be Decided

Is the Notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to cancellation of a rent increase?

### Background and Evidence

The tenancy started on February 24, 2013. Rent of \$1,400.00 is payable monthly on the 24<sup>th</sup> of each month. There is no written tenancy agreement and the Landlord agrees that from the onset of the tenancy, utilities and use of the garage were included with the rent and laundry is shared with the Landlord. The Tenant states that the Landlord is trying to get the Tenants to pay for utilities and that if paid this would be an increase in their rent that they dispute. The Tenants have not paid the Landlord any extra money

for utilities to date and the Landlord has not made a claim in relation to the payment of utilities.

On April 9, 2013, the Tenants were served with a notice to end tenancy for cause (the "Notice") that lists the following causes:

The tenant or a person permitted on the property by the tenant has:

- Seriously jeopardized the health, safety or lawful right of another occupant or the landlord;
- Put the landlord's property at significant risk.

The Landlord states that the Tenants have often left the garage door open. The Landlord states that both the Tenants and the Landlord use the garage for the storage of their belongings and their cars. The Tenant has a remote to the garage door that secures automatically and a second door that requires locking to secure. The Landlord states that although the Tenants were provided with the use of the garage this was only provided on a temporary basis. The Landlord states that she often has to check on the garage door being left open as the Landlord is concerned about the security of the Landlord's belongings.

The Tenant states that the use of the garage was part of the reason they took this tenancy. The Tenant states that the side door was left open once on the second day of the tenancy and front garage door was left open in error when the Tenant drove their child to school. The Tenant states that the text messages from the Landlord only indicate these two occasions and that on no other occasion was the door left open.

The Landlord states that the Tenants leave their doors and windows open. The Landlord states that the door between the units is locked but is concerned that a thief could break through the Tenant's door if entrance was gained entrance through the Tenant's open doors or windows. The Landlord states that the Tenants frequently trigger the fire alarm in their unit by cooking and that the noise wakes the Landlord's

baby. The Landlord states that the Tenants complain about the alarm system for the whole house as it beeps every time they open or close their doors and windows. The Landlord states that the Tenants are requesting that the Landlord disconnect the system for their unit and that this is a threat to the Landlord's security. The Landlord states that the Tenants have not been allowing the Landlord's free access to the laundry located in the basement unit and that as a result the Tenant has had to wait for long periods to do her laundry or has had to wash her laundry by hand.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Accepting that the Tenants have left the garage door open on only two occasions and considering the circumstances on these occasions I find that the Tenants made a mistake that any person could make and that such mistakes are not evidence of any significance risk or jeopardy. I do not find the remaining reasons to be valid as the Landlord has not provided evidence that the Tenants actions have resulted or are likely to result in any significant risk or jeopardy. As the Landlord has not met the burden of proof on a balance of probabilities in relation to either of the stated causes, I find that the Notice is invalid and that the Tenant is entitled to a cancellation of the Notice.

As the oral tenancy agreement provides that the rent includes utilities, as the Tenants have not paid any utilities to the Landlord and as the Landlord has not served the Tenants with any notice to increase the rent as required under the Act, I find that there has been no rent increase to dispute. It appears more that the Landlord wishes to renegotiate the tenancy agreement. Accordingly, as there has been no increase in the rent, I dismiss this part of the Tenant's application.

### Conclusion

The Notice is cancelled and the tenancy continues.

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: May 09, 2013

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Residential Tenancy Branch

