



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, MNDC, FF

### Introduction

This hearing was convened in response to applications filed by the tenants seeking to cancel two notices to end tenancy for unpaid rent and for cause, compensation for damage or loss and recovery of the filing fee paid for this application.

Both parties appeared at the hearing of this matter and both agreed to have both of the tenants applications heard together.

The parties gave evidence under oath.

### Issue(s) to be Decided

Does the landlord have cause to end this tenancy? Are the tenants entitled to compensation?

### Background and Evidence

The parties agree that this tenancy began March 1, 2013 for a fixed term ending February 2014. Rent was fixed at \$1,800.00 per month payable in advance on the first of each month.

The landlord confirmed that the sum sought on the 10 day Notice to End Tenancy for unpaid rent was paid within the five days allowed for payment.

The landlord served two notices to end tenancy for cause one on May 17, 2013 for repeated late payment of rent.

The second notice issued June 5, 2013 was also for repeated late payment of rent and that:

- Tenants or a person permitted on the property have:
  - Significantly interfered with or unreasonably disturbed the landlord or another occupant;
  - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenants have engaged in an illegal activity that has, or is likely to:
  - Damage the landlord's property
  - Adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord.
- The tenants have breached a material term; and
- The tenants have sublet or assigned the rental unit without the landlord's consent.

The landlord confirmed that since this tenancy began on March 1, 2013 the rent has been late twice.

With respect to significant interference the landlord states that the tenants are parking their vehicles improperly and making constant complaints about many things around the rental unit. With respect to illegal activity the landlord says the parking issue has caused her to have to call the police. Further that the tenants were seen walking over to the side of the property where another tenant keeps his machinery.

With respect to breach of a material term the landlord says that all the violations she has noted in this matter are breaches.

With respect assigning or subletting the rental unit the landlord says she believes the tenants have sublet some parking space to a friend or that a friend may be staying with them.

The tenants responded that the landlord and other tenants do not have to use their drive-way to enter and exit the property but they do and they get annoyed that they have to drive around the tenants' vehicles and this has caused the problems.

The landlord responded that the tenants could park their vehicles such that no one would have to squeeze by.

The tenants say they complain because the landlord told them she would complete renovations and has failed to complete them.

The landlord says she has completed most of the renovations but there are a few things left to do.

The tenants are claiming \$1,000.00 in damages of \$200.00 per month for March, April and May for loss of quiet enjoyment and an additional \$150.00 per month for storage of the landlord's personal property not removed from the rental unit.

The tenants say the landlord is harassing them with these Notices to End Tenancy and they have lost their quiet enjoyment of the property as a result. Further, the tenants say the landlord is still storing 45 cans of paint in the storage room that was meant for their own use although they are not able to use the storage room.

The landlord admits the cans are stored as described and she says she will remove them. The landlord says this tenancy has become such a burden she would just like it to end.

The tenants made no comments with respect to the assigning and/or subletting or breach of a material term.

The tenants say they have felt burdened by events themselves and would like to have a peaceful summer and remainder of their tenancy.

### Analysis

The evidence of the parties is that the tenants paid the rent requested in the 10 day Notice to End Tenancy within the proper time limits; that Notice is therefore of no force or effect. The tenants' application with respect to that notice is therefore dismissed as not required.

With respect to the notice to end tenancy regarding repeated late payment of rent, the landlord issued two notices with respect to the two same late payments. Tenancy policy provides that a tenancy may end on this ground when there are three late payments. As the evidence shows that there have been only two late payments, both Notices to End Tenancy issued on this ground are dismissed.

With respect to the rest of the grounds to end this tenancy I accept that there may be parking issues and that the police may have attended however I do not find the parking

issue or the issue of the tenants walking over to another part of the property where another tenant stores equipment to be significant so as to constitute grounds to end this tenancy as an illegal activity or otherwise.

With respect to the allegation that there has been a breach of materials terms to do with this tenancy, to end a tenancy agreement for breach of a material term a landlord must establish that the tenant breached a material term and that the tenant did not rectify the breach within a reasonable time after notice to do so by the landlord . To determine the materiality of a term, an arbitrator will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term. A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the tenancy agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. The arbitrator will look at the true intention of the parties in determining whether or not the clause is material. In this case I find that the allegations made by the landlord respecting complaints, parking and walking over to another party of the property do not constitute a breach of material term that are so important that this tenancy should end.

With respect to the allegation of assignment or subletting, assignment is the act of transferring all or part of a tenant's interest in or rights under a lease or tenancy agreement to a third party, who becomes the tenant of the original landlord. A sublease is a lease given by the tenant or lessee of residential premises to a third person (the sub-tenant or sub-lessee). I find the landlord has failed to prove that either of these circumstances exist.

Overall I am not satisfied that the landlord has presented sufficient evidence to end this tenancy on the grounds stated.

With respect to the tenant's claim for compensation for loss of quiet enjoyment I find that they too have failed to bring sufficient evidence to prove the losses claimed. While the issuance of three notices is frustrating it is the landlord's right to do so when rent is not paid or is late. Further, while the landlord may have thought she had other grounds under cause to end this tenancy, she has discovered she does not. If, now armed with more knowledge of what is necessary to end a tenancy, the landlord issues further notices which are found invalid, then the tenants may be at liberty to claim a loss of quiet enjoyment. With respect to the paint cans the landlord has agreed to remove the subject cans and is encouraged to do so.

The tenants' applications to cancel the Notices to End Tenancy are allowed and the Notices issued May 17, 2013 and June 5, 2013 are cancelled. The effect of this decision is that this tenancy shall continue beyond the effective dates set out on the Notices to End Tenancy issued in this matter.

As the tenants have been successful in their claims with respect to the cancellation of the Notices, I will allow them to recover the filing fee they have paid with respect to file 808404. The tenants are at liberty to deduct \$50.00 from their next rental payment to realize this sum. The tenants did not seek to recover the filing fee with respect to file 808405.

### Conclusion

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: June 20, 2013

---

Residential Tenancy Branch