



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Lincoln Manor  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MT, CNC, FF

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking more time to cancel a notice to end tenancy and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by both tenants and the landlord's agent.

During the hearing, the landlord did not verbally request an order of possession should the tenant be unsuccessful in their Application.

The tenants submitted they received the 1 Month Notice to End Tenancy on April 29, 2013. The tenants applied to cancel the Notice on May 6, 2013. Section 47(4) of the *Residential Tenancy Act (Act)* allows the tenants 10 days to file their Application. As the tenants filed their Application on the 8<sup>th</sup> day after receiving it there is no need for more time to submit their Application. I amend the tenants' Application to exclude the matter of more time.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Act*.

### Background and Evidence

The landlord testified the tenancy began in June 2006 as a month to month tenancy for a current monthly rent of \$980.00 due on the 1<sup>st</sup> of each month with a security deposit of \$440.00 paid.

The landlord provided a copy of a 1 Month Notice to End Tenancy for Cause issued on April 29, 2013 with an effective date of May 30, 2013 citing the tenant has allowed an unreasonable number of occupants in the unit; the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed

another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; the tenant 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; and the tenant has not done required repairs of damage to the rental unit.

In support of this Notice the landlord has provided copies of complaints regarding the tenants and warnings given to the tenants over the course of the tenancy.

Complaints – the landlord has provided 5 complaint letters dating from August 2010 (late night party); April 2011 (fighting); August 2011 (anonymous complaint regarding party and noise); April 2013 (marijuana smoke in the hall) and May 2013 (general complaint).

Warning letters – the landlord has provided 4 warning letters dating from August 2009 (late night party); April 2011 (late night party); June 2011 (use of barbecue on balcony); January 2012 (smoking in the apartment).

The landlord testified that the 1 Month Notice was issued for the following reasons:

- Unreasonable number of occupants – the landlord testified the rental unit is a 2 bedroom unit and that the tenants have allowed the male tenant's brother to stay there. The landlord testified that the brother had been turned down as a tenant and he has caused problems in the past. The landlord testified he could not provide evidence that 3 people occupying a 2 bedroom unit was unreasonable;
- Significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord – the landlord submits that the tenants use of marijuana caused a neighbouring tenant to have a severe asthma attack that required hospitalization. The complaint letter from the tenant states because of marijuana smoke in the hall, he had a severe reaction. The landlord also submits that the tenant's brother has been seen asleep in the common hallway with a cigarette in hand, there is no written complaint regarding this issue;
- Illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well being of another occupant or the landlord – the landlord points to the use of marijuana and the neighbouring tenant's severe reaction and hospitalization;
- Tenant has not done required repairs – the tenant submits that during an inspection of the rental unit he found several holes in the walls that required the tenant's repair and that these repairs have not been completed. The landlord provided no photographic evidence of the required repairs.

The tenants submit that they do not and cannot smoke marijuana in the rental unit because the female tenant is allergic to it. They go on to state the common hallway always smells of marijuana smoke. The tenants submit the only hole in the walls in the

rental unit is from where the door opens and hits the wall because there is no doorstop installed. The tenant he has repaired that and has installed a doorstop but that the only other holes are tack sized.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) There are an unreasonable number of occupants in a rental unit;
- b) The tenant or a person permitted on the residential property by the tenant has
  - i. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - ii. Put the landlord's property at significant risk;
- c) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
  - i. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- d) The tenant does not repair damage to the rental unit or other residential property, as required under section 32(3), within a reasonable time.

In regard to the landlord's assertion that the tenants have allowed unreasonable number of occupants in the rental unit, I find the landlord has failed to provide any evidence to establish that there were or have ever been too many occupants in the rental unit. I therefore find the landlord has not established this as a ground to end the tenancy.

I also find the landlord has failed to establish either that there are any repairs required in the rental unit and/or that the landlord has requested the repairs and that any repairs were not made. I therefore find the landlord has not established this as a ground to end the tenancy.

Despite the landlord providing 4 warnings to the tenants over the course of the tenancy, I find that with the exception of the January 2012 warning the remaining 3 are not related, in any way, to the reasons the landlord has indicated he has issued this Notice to End Tenancy. In addition, as neither party has provided a copy of a tenancy agreement that stipulates the rental unit is non-smoking, I find the landlord cannot even establish the tenants smoking in the rental unit was contrary to any term of the agreement.

The first two warnings were for parties; the third was for the use of a barbecue; and the fourth was in regard to smoking in the rental unit and residential building. However, I find no evidence that the tenants were ever specifically found to be smoking marijuana in their rental unit or anywhere on the residential property.

Further the complaint letter the landlord is relying indicates that marijuana smoke was in the common hallway and does not specify that it was emanating from the tenants' rental unit. I also find that despite the other more general complaint of May 4, 2013 the landlord has failed to provide any evidence of other complaints such as the tenant's brother sleeping in the hallway.

Based on the above, I find the landlord has failed to establish that the tenants' activities have significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord. I also find the landlord has failed to establish the tenants have engaged in any illegal activity.

### Conclusion

For these reasons, I cancel the 1 Month Notice to End Tenancy for Cause issued by the landlord on April 29, 2013 and find the tenancy remains in full force and effect.

I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the tenants for this application.

I order the tenants may deduct this amount from their next rent payment in accordance with Section 72(2)(a).

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 03, 2013

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Residential Tenancy Branch