



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** CNC; MNDC; OLC; RP; RR; FF

### **Introduction**

This Hearing dealt with the Tenants' application to cancel a *One Month Notice to End Tenancy for Cause* issued July 8, 2013 (the Notice); for compensation for damage or loss under the Act, regulation or tenancy agreement; for an Order that the Landlords comply with the Act, regulation or tenancy agreement; for an Order that the Landlords make repairs to the rental unit; for an Order allowing the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlords.

The parties and the witness gave affirmed testimony at the Hearing.

The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other witness and the other party, and make submissions to me.

It was determined that the Tenants served the Landlords with their Notice of Hearing documents by registered mail sent July 10, 2013. It was also determined that the Tenants served the Landlords with their amended application by registered mail sent July 31, 2013.

The Tenants testified that they provided the Landlord with their documentary evidence and copies of their digital evidence, by registered mail sent on August 6, 2013. She stated that she was due to have her baby and was not able to gather her evidence before then. The Landlords testified that they hand delivered copies of their documentary evidence to the Tenants on August 7, 2013.

The Landlords submitted that they had not had time to read through the Tenants' evidence or to properly view the three CDs provided by the Tenants. Both parties' documents were submitted to the Residential Tenancy Branch, and served on the other party, late. I explained to the parties that documentary and digital evidence

must be provided within the time lines set out in the rules of procedure and the information booklets which were provided in the Notice of Hearing documents. The parties wished to proceed with the Hearing. As the documents were mostly copies of e-mails and text messages, I invited the parties to give me their verbal testimony. Both parties had a copy of the Notice to End Tenancy, so I allowed the Notice to be considered in evidence.

### **Preliminary Matters**

Rule 2.3 of the Residential Tenancy Branch Rules of Procedures states:

#### **2.3 Dismissing unrelated disputes in a single application**

If, in the course of the dispute resolution proceeding, the arbitrator determines that it is appropriate to do so, the arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.

I explained to the Tenants that the time allotted for the Hearing is one hour and that we would not have time to consider all of the Tenants' claims. I find that the Tenants are applying for orders that are not sufficiently related to their application to cancel the Notice. The Tenants confirmed that they wished to deal with their application to cancel the Notice, and therefore the remainder of their application (with the exception of their application for recovery of the cost of the filing fee) was **dismissed with leave to reapply**.

### **Issue to be Decided**

Should the Notice be cancelled?

### **Background and Evidence**

The parties gave lengthy submissions during the Hearing; however, I refer to only the **relevant** facts and issues in this Decision.

This tenancy started on June 30, 2013. Monthly rent is \$1,050.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$525.00 and a pet damage deposit in the amount of \$250.00 on June 21, 2013.

The Notice alleges the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

- 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
  - jeopardize a lawful right or interest of another occupant or the landlord.

[my emphasis added]

The Landlords stated that they did not intend to allege illegal activity on the part of the Tenants.

The Landlords testified that the female Tenant has significantly interfered with or unreasonably disturbed the Landlords by:

1. refusing to complete a Condition Inspection Report or to sign a tenancy agreement at the beginning of the tenancy;
2. ignoring repeated notices to complete the Condition Inspection Report;
3. sending the Landlords multiple text messages in one day;
4. going to an address that the Landlords gave as a mailing address (the female Landlord's mother's house) after being told not to go there in person;
5. videotaping the female Landlord's mother; and
6. narrowly missing the male Landlord's vehicle while speeding off.

The Landlords' witness (WH) is the female Landlord's mother. She testified that she agreed to allow the Landlords to use her address as a mailing address because the Landlords told her that they were concerned about giving the Tenant their residential address. She stated that the Tenant came on her property on August 1, 2013, and handed her a rent cheque. She stated that the Tenant returned at 11:30 p.m. and posted another cheque to her door.

WH stated that the female Tenant called her on the phone, but did not respond when she answered the phone. WH said that she knows it was the Tenant because she has call display. WH testified that the Tenant returned to WH's house again on August 7, 2013.

The Tenant stated that she was ready to do the Condition Inspection on July 4, July 5 and July 7, 2013.

On July 4, 2012, the Tenant stated the female Landlord texted her at about 5:30 p.m. to meet the male Landlord at the rental unit for the Inspection. She stated that she was not home so she went immediately to the rental unit, but by the time she got there, the male Landlord was gone.

She stated that on July 5, 2013, the male Landlord came to do the Inspection at around 11:00 a.m., but was busy taking away some bunk beds and another bed that had been left there by the previous tenants. By the time he was finished dismantling the bunk beds and taking the beds out, there was only 15 minutes left because he had to leave to go to a dentist appointment at 1:00 p.m.

She testified that they arranged to do the Inspection on July 7, 2013, at 6:00 p.m., but the Landlords didn't show up, although she waited for two hours. The Tenant testified that the female Landlord called her on the phone and that they agreed to do the Inspection on July 8, 2013, at 8:00 p.m., but that the female Landlord immediately texted the Tenant back that the 8<sup>th</sup> wouldn't work, so it would have to be rescheduled for July 9, 2013, at 8:00 p.m. However, between 3:00 and 4:00 p.m. on July 8, the female Landlord cancelled the July 9<sup>th</sup> appointment.

With respect to the Landlords' allegation that the Tenant narrowly missed the Landlords' vehicle, the Tenant stated that she had parked down the street from the rental unit. When she went to move her vehicle, she was alarmed when she saw the male Landlord sitting in his vehicle parked immediately behind her vehicle. She said she felt strange about the situation, so she took off in a hurry.

The Tenant stated that because of the situation she was felt uncomfortable with the male Landlord coming to the rental unit to pick up the rent, so she went to deliver August's rent cheque to the address she had been given for delivery. After she had dropped it off, she realized that she had written the wrong name on the cheque. She was concerned about making sure that the rent was paid by midnight, so she went back to the delivery address and posted a new cheque on the door.

### **Analysis**

During the course of the Hearing, the female Landlord alleged other causes to end the tenancy that were not included on the Notice that was served upon the Tenants. Therefore, I have not included this portion of her testimony in this Decision.

The Landlords acknowledged that they did not intend to allege that the Tenants had engaged in illegal activity, and therefore the only reason left on the Notice for ending the tenancy is that the Tenants have significantly interfered with or unreasonably disturbed the Landlords.

When a landlord seeks to end a tenancy, the onus is on the landlord to prove on the balance of probabilities that the tenancy should end for the reasons indicated on the notice to end tenancy. In this case, I find that the Landlords did not provide sufficient

evidence that the Tenants had significantly interfered with or unreasonably disturbed the Landlords.

Failing to participate in a Condition Inspection Report is not reason to end a tenancy. There are consequences, however, which can be found in Sections 24, 36 and 38 of the Act. Part 3 of the regulation defines how Condition Inspections are to be carried out. There is also a guideline published by the Residential Tenancy Branch with respect to Condition Inspection Reports:

<http://www.rto.gov.bc.ca/documents/Fact%20Sheets/RTB-115.pdf>

I cautioned both parties that they should make themselves familiar with the provisions of the Act with respect to their rights and responsibilities. Attached to this Decision is an information sheet with the link to the Residential Tenancy Branch's website, and contact numbers for the parties to call to speak to an information officer.

I grant the Tenant's application to cancel the Notice to End Tenancy. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

### **Conclusion**

**The Notice to End Tenancy issued July 8, 2013, is cancelled.** The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenants are authorized to deduct the cost of the **\$50.00** filing fee from future rent due to the Landlords.

The remainder of the Tenants' application is **dismissed with leave to reapply**.

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: August 15, 2013

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Residential Tenancy Branch

