



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, RP, OPC, OPB, MND, MNDC, MNSD

### Introduction

This hearing dealt with applications from both the tenant and the landlords. The tenant applied to cancel a notice to end tenancy and for an order that the landlords comply with the Act, Regulation, or tenancy agreement and that the landlords make repairs. The landlords applied for an order of possession and a monetary order for damage to the unit, site, or property and for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

Both the tenant and landlords participated in the teleconference hearing and gave affirmed evidence.

### Issue(s) to be Decided

Should the notice to end tenancy be cancelled?

If not, are the landlords entitled to an order of possession?

Is the tenant entitled to an order that the landlords comply with the Act, Regulation, or tenancy agreement?

Is the tenant entitled to an order that the landlords make repairs?

Are the landlords entitled to a monetary order as claimed?

### Background and Evidence

The parties agree the tenancy started on September 26, 2012 and the tenant is obligated to pay \$875.00 rent monthly in advance on the first day of the month. The tenant also paid a security deposit of \$437.50. The tenant's rent includes utilities, including electricity and gas.

### **Number of Occupants**

The parties agree that landlords served the tenant personally on February 1, 2014 with a Notice to End Tenancy for Cause (the "Notice"). The Notice specifies the following cause for ending the tenancy: Tenant has allowed an unreasonable number of occupants in the unit/site. The landlords gave evidence that the tenant's daughter moved in with the tenant, without the landlords' consent, in mid-January 2014. The

landlords' position is that the tenancy agreement was made only with the tenant and she should therefore be the only occupant.

The landlords gave evidence that the additional occupant of the rental unit has resulted in an increase in the landlords' utility bills. The landlord's evidence is as follows: the electricity bill for the period January 4 – March 4, 2014 was \$197.21. The electricity bill for the previous two months was \$206.13. The landlord's gas bill for the period January 31 – March 3, 2014 was \$180.04; the previous bill for the period January 2 – January 31, 2014 was \$131.27; a bill for the period October 31 – December 2, 2013 was \$190.76.

The landlords also argue that the tenant breached a material term of the tenancy agreement by allowing a second occupant. However, the Notice does not indicate this was a specified reason for ending the tenancy so I have not dealt with evidence on this point.

The tenant agrees her daughter moved in with her in mid-January 2014. Her evidence is that the landlord initially asked her for an additional \$250.00 rent for having a second occupant. The tenant felt that was too large a rent increase but she would agree to a rent increase of \$100.00 for the second occupant.

### **Tenant's Claim regarding Repairs**

The tenant gave evidence that the only entrance to her rental unit is by a grassy path along the side of the house. She gave evidence and provided pictures which indicate the grassy path is slightly sloped with the higher side closer to the house. The tenant's evidence is that the pathway becomes muddy and slippery in wet weather. The tenant claims the landlord should provide a paved pathway along the side of the house to access the rental unit.

The tenant's evidence is that the landlord could obtain paving stones, sand, and gravel and hire a handyman to install these for about \$1,500 to \$2,000.

The landlords gave evidence that the tenancy agreement says nothing about providing a sidewalk to access the rental unit, and the landlords have made no such agreement with the tenant since. The landlords' evidence is that the tenant first mentioned the issue on February 1, 2014, after she had already been in the rental unit for over a year.

The tenant's evidence is that she mentioned the problems with the pathway to the landlords about three times, starting not long after she moved in. Her evidence is that she first put the issue in writing on February 1, 2014.

### **Landlord's Claim for Monetary Order**

The landlords gave evidence that there is damage to their van, their scooter, and the rental unit door. The landlords' evidence is that the metal front door of the rental unit contains small dents. The landlords have not obtained any estimate to repair the damage.

The landlords' evidence is that their van has been damaged on the side and the front, and they believe the damage may have been caused by a rock. The landlords gave evidence they believe the damage is deliberate vandalism. The landlords have not contacted ICBC regarding the damage and have not obtained an estimate for repair. Asked why the landlords associate the damage with the tenant, the landlords' evidence is that it is "hard to say". Their evidence is that the damage to the side of the van was caused before the damage to the front.

The landlords gave evidence that they believe the tenant is responsible because the tenant and her family are the only people coming on to the property, and it "never happened before" the tenancy.

The landlords gave evidence that there are dents in the landlord's mobility scooter which they keep outside the house. They noticed the damage in May 2013. Asked if they know what caused the damage, the landlords say they do not know. Asked why they think the tenant is responsible, the landlords say the scooter was new when they got it and they always park it outside the house.

The tenant's evidence is that the dents in the metal door of the rental unit appear to have been caused by a hammer and the dents are painted over. The tenant's evidence is that the dents were there before her tenancy.

The tenant denies she caused any damage to the landlords' van or scooter. The tenant gave evidence that early in her tenancy she heard a "bang" on her door, opened her door, and saw a rock. She says she informed the landlords about this.

### Analysis

When a landlord issues a notice to end tenancy for cause and the notice is disputed by the tenant, the onus is on the landlord to prove one or more of the specified causes on a balance of probabilities. If the landlord does not prove any of the specified causes, then I must cancel the Notice.

In this case, I find the landlord has failed to prove the single specified cause "Tenant has permitted an unreasonable number of occupants in the unit/site". The landlords were under the impression that the number of occupants permitted in a rental unit is limited to the persons who are named tenants in the tenancy agreement. That is not an accurate view of the law. Where a tenancy agreement does not contain a term that explicitly limits the number of occupants of the rental unit, the maximum number of occupants is a reasonable number.

I find that two people are a reasonable number of occupants in the two-bedroom rental unit rented by the tenant. The landlords have not proven that they experienced an increase in either their electricity bill or their gas bill as a result of the new occupant. The electricity bill actually went down slightly in the period the new occupant arrived.

The gas bill went from about \$190 in November 2013 to \$131 in January 2014 then up to \$180 in February 2014, a pattern of variance that cannot be attributed to the second occupant. For these reasons, I order that the Notice is cancelled. Since the Notice is cancelled, the tenancy will continue and the landlords are not entitled to an order of possession.

I advised the parties during the hearing that I am cancelling the Notice. At that point, the parties agreed that the tenant would pay an **additional \$100.00 in rent** during the period of time when there is a second occupant in the rental unit.

Regarding the tenant's request for a paved pathway, I agree with the submissions of the landlords. The rental unit did not have a paved pathway at the time the tenant rented it and the landlords have not agreed to provide one. Also, the tenant has not provided evidence to show that the absence of a paved pathway violates Section 32(a) by not complying with "the health, safety and housing standards required by law." For these reasons, I find that the provision of a paved pathway is not a "repair" within the meaning of Section 32 of the Act; it is an improvement which the landlord is not required to make. The tenant's claim for an order that the landlords comply with the Act, Regulation, or tenancy agreement and that the landlords make repairs is dismissed.

The landlords' claim for a monetary order is based on damage to the rental unit door, the landlords' van, and the landlords' scooter. I find that the landlords have not proven on a balance of probabilities that the tenant is responsible for any of this damage. The landlords did not provide any positive evidence that the tenant was connected with any of the damage. It appears to me that the landlords are simply speculating that the damage may have been caused by the tenant. The landlords' claim for a monetary order for damage to the unit, site, or property and for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement is dismissed.

#### Conclusion

I order that the Notice is cancelled. The tenant's application for an order that the landlords comply with the Act, Regulation, or tenancy agreement and that the landlords make repairs is dismissed. The landlords' application for an order of possession and for a monetary order is dismissed.

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: April 02, 2014

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Residential Tenancy Branch

