



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC FF

### Introduction

This hearing dealt with the tenants' application to cancel a notice to end tenancy for cause. Both tenants, an advocate for the tenant and the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Preliminary Issues

#### *Notice to End Tenancy*

The landlord served the tenants with a notice to end tenancy for cause that indicated two causes for ending the tenancy: (1) the tenants significantly interfered with or unreasonably disturbed other occupants; and (2) the tenants breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the hearing, the landlord confirmed that there was a written tenancy agreement for the tenants' first tenancy, in unit D, but when the tenants transferred to unit A, no new written tenancy agreement was produced. I explained to the landlord that when the tenants moved into a different rental unit, a new tenancy began, and the previous tenancy agreement and addendum could not be applied to the new tenancy.

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. A material term must be clear and unambiguous to both parties. In this case, as there was no written tenancy agreement with a clear and unambiguous material term, I found that the landlord could not allege a breach of a material term. I therefore did not hear evidence regarding this second alleged cause to end the tenancy, only the allegation that the tenants significantly interfered with or unreasonably disturbed other occupants.

### *Reinstatement of the Tenancy*

At the end of the teleconference hearing, the tenants' advocate submitted that the landlord accepted rent for April 2014 with no conditions noted. The effective date on the notice to end tenancy for cause was March 31, 2014.

When a landlord has served a tenant with a notice to end tenancy and then accepts rent for the month after the tenancy was to end, the landlord may be seen to have reinstated the tenancy. However, a notice to end tenancy cannot be unilaterally withdrawn by one party. If a notice is waived, a new or continuing tenancy can only be created by the express or implied consent of both parties.

In this case there was no express consent of the landlord to reinstate the tenancy. I find that there was no implied waiver of the parties either, as there was no clear, unequivocal and decisive act of the landlord that amounted to estoppel. The tenants did not provide sufficient evidence to establish that they believed that the landlord was reinstating the tenancy by accepting April 2014 rent. Therefore, when the landlord accepted rent for April 2014, she did not reinstate the tenancy.

### Issue(s) to be Decided

Is the notice to end tenancy for cause valid?  
If so, is the landlord entitled to an order of possession?

### Background and Evidence

The rental unit is one of four units on the property, all four of which are contained in two duplexes. The tenants moved into rental unit A on August 1, 2012.

### *Landlord's Evidence*

The landlord stated that since the tenants moved in, other residents on the property have been complaining about the tenants' dogs. The complaints are now on a weekly or bi-weekly basis. The landlord believed that the tenants had four dogs. The other occupants have complained that the dogs were running around off their leash and without supervision, barking at people, chasing the other occupants' cats, eating the cats' food and running into the other occupants' home. Further, the tenants were not cleaning up the dog feces everywhere, and the other occupants were left to clean it up. The dogs have been barking inside the rental unit in the daytime. On one occasion, one of the tenants' dogs nipped the landlord's ankle. The landlord stated that the tenants' dogs have been significantly interfering with and unreasonably disturbing other occupants. The landlord stated that the tenants did not start cleaning up after their dogs until they were served with the notice to end tenancy. In support of her evidence, the landlord submitted email complaints she received from other occupants.

In the hearing, the landlord orally requested an order of possession effective May 31, 2014.

### *Tenants' Response*

The tenants stated that they only have two dogs, and they got rid of the other three dogs. The tenants stated that some of the feces may be from other dogs and cats that have been running through their yard. The tenants stated that they told the landlord they have picked up their dogs' feces. The tenants stated that there is nothing they can do about noise during the day, because no one is home to shush the dogs.

### Analysis

Upon consideration of the evidence, I find that the landlord has provided sufficient evidence to establish that the tenants have been significantly interfering with and unreasonably disturbing other occupants on the rental property. The tenants acknowledged that they leave the dogs barking in the rental unit during the day and "there is nothing [they] can do about it." This alone amounts to unreasonably disturbing other occupants, and the tenants are unwilling to rectify the situation. I accept the landlord's evidence regarding the ongoing disturbances. I therefore find that the notice to end tenancy is valid and I dismiss the tenants' application.

In the hearing the landlord orally requested an order of possession. When a tenant applies to cancel a notice to end tenancy and their application is dismissed, if the landlord orally requests an order of possession in the hearing I must grant it. Accordingly, I grant the landlord an order of possession effective May 31, 2014.

As the tenants' application was not successful, they are not entitled to recovery of the filing fee for the cost of their application.

### Conclusion

The tenants' application is dismissed.

I grant the landlord an order of possession effective May 31, 2014. The tenants must be served with the order of possession. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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 22, 2014

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Residential Tenancy Branch

