



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Pinnacle International  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants to cancel a notice to end tenancy for cause and to recover the filing fee from the landlords for the cost of the application.

Two of the 3 named tenants attended the conference call hearing and advised that the other named tenant no longer resides in the rental unit. The named landlord attended and also represented the landlord company. Both tenants and the landlord provided affirmed testimony and were given the opportunity to cross examine each other. Another person attended with the tenants as an observer only, with the consent of the landlord, and the observer did not testify or speak at all during the course of the hearing other than to identify herself.

The landlord provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to the tenants, however the evidence provided by the tenants was not provided to the landlord. The Residential Tenancy Branch Rules of Procedure require that parties exchange all evidence they wish to rely on at a hearing at least 5 days before the scheduled hearing date. Therefore, the tenants' evidence package cannot be considered in this Decision.

All other evidence has been reviewed, and that evidence, along with the testimony of the parties is considered in this Decision.

### Issue(s) to be Decided

Should the notice to end tenancy for cause be cancelled?

### Background and Evidence

The landlord testified that this fixed term tenancy began on December 1, 2012, expired on November 30, 2013 and then reverted to a month to month tenancy. The tenants still reside in the rental unit. Rent in the amount of \$1,325.00 per month is payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. On November 7, 2012 the landlord collected a security deposit from the tenants in the amount of \$650.00 which is still held in trust by the landlord.

The landlord further testified that on February 20, 2014 the landlord called the tenants asking them to remove curtains that were on the balcony of the rental unit. The landlord then followed up with a letter the next day, a copy of which has been provided. The letter is dated February 21, 2014 and highlights sections 26 and 42 of the tenancy agreement in regards to balconies. The letter also states, "We provide all tenants with both a bike lock up area and storage lockers in the building. So therefore you have one week from today to remedy this issue. On Friday Feb. 28<sup>th</sup> I will come in and make sure you have complied to this letter. Any questions feel free to call me."

The landlord saw the curtains from the outside of the rental unit, and then attended the rental unit on February 28, 2014 in the morning, and the curtains had not yet been removed. The landlord saw one of the tenants and asked if the curtains had been removed, and then issued a 1 Month Notice to End Tenancy for Cause, a copy of which has also been provided. The notice is dated February 28, 2014 and contains an expected date of vacancy of March 31, 2014. The reason for issuing the notice is: Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord further testified that the sections of the tenancy agreement that have been breached are as follows:

**"26) OUTSIDE.** A rug, mop, rag or duster must not be shaken out of a window door, or in a common area of the residential property. Nothing may be thrown from or placed on, hung on, or affixed to the inside or outside of a window, door balcony, or an exterior part of the residential property. An awning, antenna, satellite dish, cable or wire must not be installed on the residential property. A barbecue must not be used on or in the rental unit or stored on a balcony without the prior written consent of the landlord."

**"42) BALCONY/PATIO USAGE.** Balcony/Patio furnishings are restricted to outdoor furniture (tables, chairs garden umbrellas, barbecues) in usable

condition, as well as reasonable number of plants, planter pots, and hanging plants. Nothing shall be thrown from, nor may any other articles be placed on or hung from the balcony rails without permission.”

The landlord also testified that after the issuance of the notice to end tenancy, the tenants hung bamboo blinds. The tenant’s worker called asking if that would be acceptable and the landlord replied that it would be if permission were granted. Some of the rental units have the sun hitting them, and tenants have written to the landlord asking for permission to hang blinds or curtains, and permission has been granted. The tenants in this case have not made such a request.

The first tenant testified that the tenants knew they had to comply with the landlord’s request and removed the other items, but for privacy reasons did drag their heels on removing the curtains. However, they thought they had until the end of the day on February 28, 2014. He further testified that they had every intention of removing the curtains by the end of the day on February 28, 2014 and questions how he was to know the landlord would be there on the morning of the day they were required to comply.

The tenant further testified that his worker had advised that the landlord had advised that the bamboo blind was okay, so he hung the blind. Then to be sure, he called the landlord to confirm that, but the landlord replied that it wasn’t okay but did not provide any explanation.

The other tenant testified that blinds are necessary in the rental unit because of the number of windows that overlook it. The tenant has mental health issues and finds that she cannot relax with that many overlooking windows.

The tenant also testified that she resided in the rental complex before this tenancy began, in another rental unit. She had balcony curtains at that time which were not a problem, so she thought that still applied.

### Analysis

I have examined the tenancy agreement, the landlord’s letter to the tenants, and the notice to end tenancy. I find that the notice to end tenancy is in the approved form and contains information that is consistent with the *Residential Tenancy Act*.

I accept the landlord’s testimony that the tenants could not be allowed to hang curtains on the balcony, or others would do it as well. The landlord complied with the *Act* by following up the visit on February 20, 2014 with a letter.

The tenants testified that the items that the landlord wished removed from the balcony, such as bikes, were removed and that they believed it was okay to remove the blinds by the end of the day on February 28, 2014. One of the tenants also testified that while living in a different unit in the same complex the tenant had curtains up, and no request was received from the landlord to remove them. The letter states that the landlord will return on the 28<sup>th</sup> to ensure the curtains were removed, but I agree with the tenants, there was no indication from the landlord that they had to be removed by February 28<sup>th</sup> in the morning, and the landlord issued the notice to end tenancy in the morning.

The *Act* allows a landlord to end a tenancy for breach of a material term if the breach is not corrected within a reasonable time after written notice to do so. In this case, I find it reasonable that the tenants believed they had until the end of the day on February 28, 2014 to remove the curtains. I also find that they showed their good intentions to comply with the request by removing all other items prior to the morning of February 28, 2014. I also find that a reasonable time to correct the breach would have been at the end of the day or waiting until the following morning if the landlord had reason to believe that the tenants were not going to comply with the written request. Therefore, I cancel the notice to end tenancy.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$50.00 filing fee for the cost of the application. I order that the tenants reduce a future month's rent by that amount as recovery.

### Conclusion

For the reason set out above, the notice to end tenancy issued on February 28, 2014 is hereby cancelled and the tenancy continues.

I hereby order the tenants to reduce a future month's rent by \$50.00 as recovery of the filing fee.

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 28, 2014

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Residential Tenancy Branch

