



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNR, MNDC, OLC, RP, LRE, O

### Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy – Section 47;
2. A Monetary Order for cost of emergency repairs - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order for the Landlord to comply – Section 62;
5. An Order for repairs to the unit – Section 32;
6. An Order suspending or setting conditions on the Landlord’s right to enter the unit – Section 70;
7. Other.

The Landlord, under affirmation, and the Tenants, under oath, were each given full opportunity to be heard, to present evidence and to make submissions. The Witness provided evidence under oath.

### Preliminary Matter

At the onset of the hearing the Tenants confirmed that the primary issue to be resolved was the notice to end tenancy. The Tenant confirmed that there were no emergency or other repairs required. Noting that the remaining claims for compensation and costs were not related to the end of the tenancy, these claims were dismissed with leave to reapply with the exception of the Tenant’s claim for conditions on the Landlord as this is an issue that would reasonably require an earlier resolution.

The Tenant also sought to present an evidence package at the Hearing that was not provided to the Landlord in advance of the hearing. The Tenant stated that the submissions were mostly already provided in the earlier packaged and that the new package contained additional photos. The Tenant requested an adjournment for consideration of this new package. I found that to accept this evidence at the time of the hearing would seriously prejudice the Landlord. I also considered that the primary additional evidence would be photos and found that they do not constitute sufficient reason for delaying the hearing. As a result, I declined to consider the Tenants’ late evidence package and I denied the request for an adjournment.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to conditions being placed on the Landlord's access to the unit?

Background and Evidence

The tenancy started on December 5, 2013. Rent of \$575.00 is payable each month on the first day of the month. On April 9, 2014 the Landlord gave the Tenant a one month notice to end tenancy for cause (the "Notice"). The reasons noted on the Notice are as follows:

1. The tenant has allowed an unreasonable number of occupants in the unit;
2. 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;
3. The tenant or a person permitted on the property by the tenant has:
  - a. Significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - b. Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - c. Put the landlord's property at significant risk.
4. 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 states that the Tenants have brought four to five different people into the unit at different times, all the time coming and going. The Landlord states that these are street people who are dangerous. The Landlord states that the Tenants do not work and are charging these persons money to stay at the unit for periods of time. The Landlord states that he has no evidence of the exchange of money. The Landlord states that one of these persons has been seen most often and that this person attempted to assault the Landlord with a knife. The Landlord states that this person is an international criminal and knows this from overhearing the police. The Landlord states that the police were not told about the incident with the knife as the Landlord did not want to make things more serious. The Landlord states that this person is a member of a mental society and is therefore mentally dangerous. The Landlord's Witness, lies in the unit across from the Tenants and states that he sees regular visitors to the Tenants' unit, mostly in the afternoon. The Witness states that he has not seen anyone staying overnight at the unit. The Witness believes that the Tenants are charging for stays at their unit.

The Tenant states that no persons occupy the unit other than themselves and that the one person identified by the Landlord as a regular person at the unit is a frequent visitor. The Tenant provided letters confirming this person's residence from other Landlords from March 4, 2014 to current. The Tenant states that this person also stays at a trailer. The Tenant states that this person is a director of a society for mental health that was created 23 years ago. The Tenant provided the full name of this society. The Tenant

states that he was also a director of the same society in the past. The Tenant states that he has never seen the other person identified by the Landlord as being at the unit.

The Landlord states that the Tenants have breached their tenancy agreement by using the roof top area and having personal belongings on the roof top. The Landlord states that the Tenants were told not to use the roof top and that a warning letter was given to them on April 5, 2014. The Landlord states that nothing has been moved off the roof top.

The Tenant states that prior to signing the tenancy agreement they were shown the door to the roof top, that clothes were seen hanging and that access to the roof top is only from the Tenants' unit and a store in the building. The Tenant states that the Landlord also gave them patio furniture to use on the roof top. The Tenant states that they stopped using the roof top and cleaned up their articles by April 5, 2014.

The Landlord states that the Tenants are storing chemicals in containers in the unit. The Landlord states that he does not know if the containers have actual chemicals in them but the Landlord believes that the Tenants are carrying out secret activities related to those chemicals. The Landlord states that the police were called to investigate but that they only looked around and saw a mess.

The Tenant states that no chemicals are being stored and that the police checked all the bins finding that the contents matched the labels on the bins. It is noted one of the Tenant's photos show one such container labelled baking powder.

The Tenant states that the Landlord wants the Tenants to move out of the unit as the person operating the store in the building wants to buy the building and occupy the Tenants' unit because of the roof top access. The Landlord states that the building is not listed for sale but that someone did ask to buy the building and that the Landlord provided his selling price to this person. The Landlord states that he has not received any offers to purchase as of this date.

The Tenant states that the Landlord has repeatedly entered his unit without notice and requests an order restricting the Landlord's unit. The Tenant agrees that the Landlord has always entered with permission given at the time of the entry. The Tenants states that they started to refuse the Landlord's entry without notice in April 2014.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid.

The Landlord's evidence of illegal activity or the storage of chemicals by the Tenants or their guests is weak or non-existent and based primarily on belief. The Landlord did not

provide any evidence of disturbance to other tenants. Although the Landlord gave evidence that one of the Tenant's visitors was dangerous and attempted to assault the Landlord, I also note the Landlord's own evidence of not reporting this incident to the police. Given the Tenants believable responses to the allegation of illegal activities and the storage of goods in the bins, I find that the Landlord has not met the burden of proof required to show that the Tenant or a person permitted on the property has done anything significant or serious to cause the Landlord or other occupants or the property to be significantly disturbed or at risk of damage.

Given the Tenant's evidence of residency of the one person identified by the Landlord as an occupant of the unit and considering the Landlord's Witness only provided evidence of persons being at the unit during the day, I find that the Landlord has failed to substantiate on a balance of probabilities that the Tenant has allowed an unreasonable number of occupants in the unit.

Given the Tenant's evidence of roof top access from only the unit and the store and considering that the Tenants were shown this area before signing the tenancy agreement, I find that at a minimum this area is a common area for the store and the unit. Use of this area by the Tenant would not necessarily be a breach of the tenancy agreement. Given the access to this area from the store, it would be reasonable for the Landlord to place some restrictions on this area such as bringing out personal items to the roof top however there is no evidence that such restrictions were placed on the Tenant until April 5, 2014. As the Landlord served the Notice on April 9, 2014 I find that even if there was a breach of a material term, the Landlord has not substantiated that the Tenants were given a reasonable time to make the corrections. Given the above findings and reasons I find that the Notice is not valid for the reasons stated on the Notice and that the Tenant is therefore entitled to a cancellation of the Notice. The tenancy continues.

Section 29 of the Act provides as follows:

- (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
  - (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
  - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
    - (i) the purpose for entering, which must be reasonable;
    - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

Given the Tenant's evidence that the Landlord had been given permission at the time of the past entries and no evidence to support any unauthorized entries since the Tenant stopped giving such permission, I find that the Tenant has not established a reason to restrict the Landlord any more than as provided under the Act. I therefore dismiss the Tenants' claim for restricted entry of the unit by the Landlord.

#### Conclusion

The Notice is cancelled. The Tenants' claim for restrictions on the Landlord's right of entry is dismissed. The remaining claims are 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: June 16, 2014

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Residential Tenancy Branch

