



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MT; CNC; FF

### **Introduction**

This Hearing dealt with the Tenants' application filed June 9, 2014, to be allowed more time to file an application to cancel a notice to end tenancy; to cancel a *One Month Notice to End Tenancy for Cause* issued May 31, 2014 (the Notice); and to recover the cost of the filing fee from the Landlord.

The parties 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 party, and make submissions to me.

There were no issues identified with respect to service of the Notice of Hearing documents, or exchange of evidence.

### **Preliminary Matter**

The Tenants applied for an extension of time to file their application to cancel the Notice; however, the Tenants testified that they received the Notice on May 31, 2014 and the Tenants filed their application on June 9, 2014. The Act requires tenants to dispute a one month notice for cause within 10 days of receiving the notice. In this case, the Tenants filed their application within the time limit and therefore their application for more time is not necessary and is dismissed.

### **Issue to be Decided**

- Should the Notice be cancelled?

## **Background and Evidence**

The rental property is a house with two suites. There is one hydro meter for both suites. The Tenants live in the downstairs suite of the rental property.

### **The Landlord gave the following testimony:**

The Landlord stated that the Tenants have lived in the rental unit for approximately 7 years. During that period of time, there have been 3 occupants in the upstairs suite who have moved out because of the Tenants' actions. When the current upstairs occupants moved in, the Landlord stated that he warned the Tenants not to take matters into their own hands and that they must call him if problems arose and he would deal with it.

The Landlord advised the Tenants before they entered into the tenancy agreement that the upstairs suite was a four bedroom suite and would probably be occupied by families. The Tenants insisted that family noise would not be an issue.

By way of background, the Landlord gave the following history with respect to upstairs tenancies:

1. Occupants moved into the upstairs suite on April 1, 2010. They paid rent for June, 2010, but moved out without notice on June 2, 2010. The occupants stated that that they had verbal altercations with the Tenants and that they would not stay any longer.
2. Occupants moved into the upstairs suite on July 1, 2010, and moved out in February, 2011. They complained that the Tenants used excessive hydro and had verbal altercations with the occupants. The occupants moved out even though the Landlord agreed to pay them an additional \$25.00 towards the Tenants' hydro usage. The Landlord provided a written statement from the occupants in evidence.
3. An occupant moved into the upstairs suite on January 1, 2012, and moved out on August 31, 2013. This occupant also complained of excessive hydro usage and that the Tenants were "being difficult to live with". The Landlord provided a copy of this occupant's notice to end the tenancy.
4. All occupants who lived in the upstairs suite have complained that the Tenants regularly bang on the ceiling when they feel they are being disturbed by normal noise.
5. The current occupants of the upstairs suite have put the Landlord on notice that they will also leave if the Landlord does not evict the Tenants.

The Landlord testified that, despite his warning, the female Tenant had another altercation about noise with the upstairs occupants on May 31, 2014, at 7:15 p.m.

The Landlord's witness gave the following testimony:

The witness is one of the current upstairs occupants. The witness stated that the occupants had a number of issues with the Tenants:

1. The occupants put out decorations on the front lawn for Hallowe'en. The Tenants took their Hallowe'en decorations down and stated that the front yard was for the Tenants' use only.
2. The occupants have children who play music during the day time hours. The Tenants complain about the music being too loud.
3. The occupants have chickens. The Tenants try to give the occupants rules about how to keep the chickens.
4. The occupants believe that the Tenants are taking their mail.
5. The rental property is a non-smoking house and the Tenants are chain smokers. The smell of the smoke comes up through the ventilation and permeates the occupants' linens.
6. The female Tenant has threatened to call the Ministry about the occupants' children.
7. The Tenants take photographs of the occupants' guests' vehicles.

The Tenants gave the following testimony:

The Tenants stated that when the current upstairs occupants moved in on September 1, 2013, the Tenants showed them the breaker, which is located in the Tenants' suite, and told them not to plug into a certain outlet or it would trip the breaker. The Tenants stated that every day for the first week the breaker would trip because the occupants would plug into the outlet.

The Tenants testified that the upstairs occupants' kids run around all day and their Dad yells and swears at them. The occupants have loud parties and play loud music. The Tenants stated that the occupants told the Tenants to come and speak to them if the music was too loud.

The Tenants stated that there are 10 people living in the upstairs suite and that "last weekend" the occupants had a party and they were "smoking dope".

The Tenants agree that the Landlord said something about calling him and not approaching the upstairs occupants, but the Tenants submit that they were not provided with due warning because it was not in writing.

The Tenants stated that they told the Landlord about the loud music coming from the occupants above, and that he told them to buy ear plugs.

The Tenants stated that the last occupants left because they could not afford the rent and not because any of the Tenants' actions.

The Tenants testified that they took down the Hallowe'en decorations so that they could mow the lawn and that they put them back up afterwards.

The Tenants acknowledged that they had taken photos of the occupants' guests' cars. They submitted that they took the pictures to show that the Tenants could not get through to the rental unit because of the way the occupants' guests' cars were parked.

The Tenants denied taking any of the occupants' mail.

The female Tenant testified that she attempted to call the Landlord on May 31<sup>st</sup> to complain about the noise, but the Landlord was not home so she left a message.

The Tenants' witness RT gave the following testimony:

The witness is the Tenant BT's brother. He stated that he has been at the rental unit and that he has found the noise coming from upstairs to be unbearable. He stated that the upstairs occupants play music very loudly and that they allow their chickens to roam freely about the rental property.

The Tenants' witness PB gave the following testimony:

This witness is a neighbour who lives across the street from the rental property. He stated that he has witnessed loud music coming from the upstairs occupants' suite and that he has also noticed chickens wandering freely around the rental property. The witness testified that his son works with one of the previous occupants and that his son was told that they moved out because they could not afford the rent. The witness stated that the Tenants were quiet, nice people.

The Landlord gave the following reply:

The Landlord stated that he never heard any of the Tenants' complaints until after he had served them with the Notice to end the tenancy. He stated that he cannot deal with problems that he doesn't know about.

The Landlord reiterated that the previous occupants had provided their written statements with respect to why they moved out.

The Landlord testified that when the female Tenant called him on May 31, 2014, he was on the phone with the upstairs occupants and that he got her message and returned her call but she did not answer. He surmised that she must have already gone upstairs to confront the occupants.

**The Landlord requested an Order of Possession.**

### **Analysis**

When a Tenant seeks to dispute a notice to end the tenancy, the onus is on the Landlord to provide sufficient evidence to prove on the balance of probabilities that the tenancy should end for the reason provided on the Notice. In this case, the Notice indicates the following reason 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.

I explained to the parties that the Landlord has an obligation under the Act to provide all of his tenants with peaceful enjoyment of the rental property. If a tenant complains to a landlord, the landlord must investigate the complaint and do what is reasonable to attend to the complaint. The issue here is the Tenants' behaviour and whether or not the Tenants have significantly interfered with or unreasonably disturbed another occupant or the Landlord, not to determine whether or not the occupants have unreasonably disturbed the Tenants.

The Tenants submitted that they were not given sufficient warning because the Landlord did not put it in writing; however, I do not accept this argument. It is true that a landlord must provide a tenant with written warning in the case where the landlord is alleging that the tenant has failed to comply with a material term and has not corrected the breach within a reasonable time after being given written notice; however, this is not what the Landlord has alleged on the Notice. The Tenants did not dispute that the

Landlord warned them not to take things into their own hands with respect to the upstairs occupants.

I find that the Tenants ignored the Landlord's warning and that, on the balance of probabilities and with the past history provided, they have unreasonably disturbed the other occupants of the rental property by infringing upon the occupants' privacy (advising how to raise their children and photographing their guests), impinging on the occupants' right to use of the common property and attempting to make rules with respect to the noise levels that the Tenants will condone. Therefore, I find that the Tenants have deprived the other occupants of their quiet enjoyment of the rental property.

I make no finding with respect to whether or not the upstairs occupants unreasonably disturbed the Tenants because it is not before me.

For the reasons set out above, I find that the Notice is a valid notice to end the tenancy. I find that the tenancy ended on June 30, 2014, in accordance with the provisions of Section 47 of the Act.

**Further to the provisions of Section 55 of the Act, I hereby provide the Landlord with an Order of Possession.**

### **Conclusion**

**The Tenants' application is dismissed.** I find that the tenancy ended on June 30, 2014.

**I hereby provide the Landlord with an Order of Possession effective 2 days after service of the Order upon the Tenants. This 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: July 31, 2014

**CORRECTED AUGUST 19, 2014**

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Residential Tenancy Branch