



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenants applied for an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice") and for recovery of the filing fee paid for this application.

The hearing process was explained to the parties attending and they were given an opportunity to ask questions about the hearing process. The parties were advised that the landlord would proceed first in the hearing due to the landlord being required to support that the Notice was valid and contained merit.

Both parties confirmed receipt of the other's documentary evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other's evidence, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Are the tenants entitled to an order cancelling the Notice and for recovery of the filing fee paid for this application?

### Background and Evidence

There is no written tenancy agreement. The rental unit is an apartment in a multi-unit, multi-level apartment building.

The tenants submitted undisputed evidence that the tenancy began in November 1999, and monthly rent is \$796. The tenants also submitted that they paid a security deposit of \$250.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenants a 1 Month Notice to End Tenancy for Cause. The Notice was dated June 23, 2014, and listed an effective end of tenancy on July 31, 2014. The landlord submitted that she delivered the Notice by placing the same in the tenants' mail slot on their door.

The causes listed on the Notice alleged that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord and have seriously jeopardized the health, or safety or lawful right of another occupant or the landlord.

The landlord's relevant documentary evidence included, but was not limited to, a letter to the tenants dated June 5, 2014, which indicated the subject was a final warning for smoke/noise disturbance/sanitary standards, a copy of the Notice, a complaint to the landlord from a neighbour of the tenants about alleged cigar smoking, a complaint made by a neighbour of the tenants about the tenants' shouting, made on September 22, 2013, an undated complaint letter about the tenants from a former neighbour, another handwritten letter from a former neighbour of the tenants, dated November 29, 2013, and letters of complaint from the tenants occupying the rental unit above the tenants complaining of the tenants' cigarette smoke and smoking smells, harassment from the tenants, and the sanitary conditions of the rental unit.

In support of their Notice, the landlord, who is the on-site manager, submitted that the issues with these tenants began last year, when she began receiving complaints from adjoining tenants and tenants living above these tenants. Some of the complaints alleged that the tenants were either knocking or banging on the ceiling or walls when they heard noises coming from the other rental units. These complaints also alleged that the knocking or banging was unjustified as there were no unreasonable noises at the time.

Other complaints were that the tenants harassed one of the tenant's child and in another instance, the girlfriend/occupant of another tenant living directly above them.

Another source of many of the complaints was the smoking by the male tenant, which had interfered with or unreasonably disturbed the other tenants, with concerns for their health.

In response to my question, the landlord submitted that the tenants were allowed to smoke in their rental unit and that the apartment was not a non-smoking building.

In response to my further question, the landlord submitted that until the letter of June 5, 2014, which stated that it was final warning, any other warning to the tenants were verbal.

The landlord confirmed that when she received complaints by other tenants, she would address the complaints with the tenants, but that she did not investigate the nature of

the complaints with both sides. The landlord stated there was not much to investigate as it was a matter of tenants complaining about each other.

*Tenants' response-*

The tenants admitted to banging on the ceilings and walls at one point, but stopped when the landlords asked them to on October 29, 2013, not doing so again.

The tenants denied harassing any other tenant.

The tenants submitted that the landlord never gave them verbal warnings and that the first time they received a warning was with the June 5, 2014, letter.

The tenants submitted that many tenants in the building smoked and that if the tenants making the complaints about their smoking had health or allergy concerns, they should not have moved into a building allowing smoking.

The tenants denied that their rental unit was unsanitary, but that perhaps there would have been cobwebs or some dirt due to a physical disability. The tenants submitted that they now agreed to sign up for a housekeeping service.

Analysis

The landlord was responsible to prove the causes listed on the Notice.

I find that the landlord has not presented sufficient evidence to demonstrate that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord and have seriously jeopardized the health, or safety or lawful right of another occupant or the landlord. I reached this conclusion due to the landlord's confirmation that they failed to investigate the complaints made by other tenants, together with these tenants, to determine if the complaints had merit.

The tenants at the hearing presented another side to the complaints made by their neighbours, and denied that they were in the wrong.

I also was not persuaded by the letter of June 5, 2014, which was labeled a final warning, as there was no proof presented other than verbal disputed testimony that the tenants had been issued any other warnings by the landlord.

Due to the above, I find that the landlord has submitted insufficient evidence to prove the causes listed on the Notice.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause dated June 23, 2014, for an effective move out date of July 31, 2014, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be

cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

As the tenants' application seeking cancellation of the Notice is granted, I allow them recovery of their filing fee paid for this application in the amount of \$50. The tenants are directed to deduct this amount from their next or a future month's rent in satisfaction of their monetary award and advise the landlord when so making this deduction.

### Conclusion

The tenants' application has been granted as I have ordered that the landlord's 1 Month Notice to End Tenancy for Cause dated June 23, 2014, be cancelled.

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: August 27, 2014

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Residential Tenancy Branch

