



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT Limited Partnership  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC MNDC RP FF

### Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for cause, as well as for monetary compensation and an order for repairs. One tenant, an articulated student representing the tenant, two agents for the landlord and a witness for the landlord participated in the teleconference hearing.

The hearing first convened on December 4, 2014. On that date, the tenants had not been served with the landlord's evidence and I did not have the tenants' evidence before me. I determined that it was appropriate to adjourn the hearing to allow the landlord to serve the tenants with their evidence and if necessary for the tenants to re-submit their evidence to the Branch. The hearing reconvened on January 7, 2015, and the parties confirmed that they had received the other party's evidence.

I determined that the issue of the notice to end tenancy took precedence, and only heard evidence on that issue. I will address the remainder of the tenants' application in the conclusion of my decision.

In the hearing, the 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.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

## Background and Evidence

On October 22, 2014 the landlord served the tenants with a notice to end tenancy for cause. The notice indicated that the reason for ending the tenancy was that the tenants had significantly interfered with or unreasonably disturbed another occupant.

### *Landlord's Evidence*

The landlord stated that on August 18, 2014 the landlord received a verbal complaint from the occupant residing in the unit below the tenants. The occupant told the landlord that there was pet urine and feces coming from the tenants' balcony onto her balcony. On August 19, 2014 the landlord served the tenants with a caution letter, in which the landlord advised the tenants that dirty water was running down onto the below balcony, that some tenants were complaining about the smell of animal urine coming from the tenants' balcony, and balconies were not to be used as a place for animals to use as a washroom.

The landlord stated that on September 20, 2104 they received a written complaint from the occupant residing below, and on September 22, 2014 they served the tenants with a second caution letter. On October 14, 2014 the landlord received a third complaint, and the landlord attended the occupant's rental unit to inspect her balcony. On October 22, 2014 the landlord served the tenants with the notice to end tenancy for cause.

The occupant residing below the tenants appeared as a witness for the landlord. The witness stated that she has seen feces on her balcony and the smell is so bad that she can't even use her balcony. She stated that it is disgusting, sticky and smelly and yellow, and unbearable. The witness stated that there are drip marks coming from above, and she has a dog and cat and can recognize the smell of pet urine and feces.

One agent for the landlord stated that he saw feces all over the railing of the occupant's balcony. He stated that when he spoke to the female tenant, she told him that she was sorry, that there was a crack in the kitty litter box and it wouldn't happen again. The agent stated that he had a clear view of the tenants' balcony through a window in the second floor hallway, and on at least five occasions he saw urine and feces on the tenants' deck.

In the hearing the landlord requested an order of possession effective January 31, 2015.

### *Tenants' Response*

The tenants denied allowing their pets to use their balcony as a washroom. The tenants submitted that any smells or unpleasant liquid on the occupant's balcony is as a result of water damage to their balcony. The tenants submitted a letter from the occupant who resides directly above them. In this letter the occupant above indicated that the paint on her balcony has "blistered" over the years due to rain pooling on the surface. The tenants submitted that the odour may be as a result of other residents' pets defecating directly below the occupant's balcony.

The tenants acknowledged that they have let their dog use the balcony as a washroom in rare emergency situations, but indicated that they clean it up as soon as it is noticed. The tenants indicated that while they do keep their kitty litter box on the balcony, it is not possible for any pet waste to go over the balcony, as they built a "lip" or ridge at the edge of the balcony so that water could not go over the edge.

### Analysis

Upon consideration of the evidence I find that the notice to end tenancy is valid. I accept the testimony of the occupant residing below the tenants and the landlord's agent that the occupant's balcony is unusable because of pet waste that is coming from the tenants' balcony. The occupant stated that she could recognize the smell as pet waste because she has a cat and dog. The agent for the landlord stated that he saw feces on the occupant's balcony railing. I find this evidence reliable and credible.

The tenants' application to cancel the notice to end tenancy is dismissed. The landlord requested and is entitled to an order of possession.

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

### Conclusion

I grant the landlord an order of possession effective January 31, 2015. 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.

As the tenancy is ending, the tenants' application for an order that the landlord comply with the Act is dismissed without leave to reapply. The tenants' application for monetary compensation is 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: January 7, 2015

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Residential Tenancy Branch

