



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Mukhtiar Growers Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with an application by the tenants for an order setting aside a 1 Month Notice to End Tenancy for Cause. Both parties appeared and had an opportunity to be heard. The landlord confirmed that they had not filed any written evidence.

### Issue(s) to be Decided

Does the landlord have grounds to end this tenancy, within the meaning of the *Residential Tenancy Act*?

### Background and Evidence

This tenancy has existed for over twenty years. The monthly rent, which has remained at \$800.00 for at least seven years, is due on the first day of the month.

The rental unit is located on a raspberry farm. The landlord and the extended family own several of the farms on this road. The landlord's parents live on this property and the landlord lives on a nearby property.

The landlord issued and served the tenants with a 1 Month Notice to End Tenancy for Cause on February 28, 2015. The reason stated on the notice was that the tenants had significantly interfered with or unreasonably disturbed another occupant or the landlord. The tenants filed this application disputing the notice on March 3, 2015.

The landlord testified that two incidents led to the issuance of the notice to end tenancy. The first occurred last July when he and the female tenant had an argument about moving one of the tenant's motor vehicles to ensure there was sufficient room for the harvesters that were operating at that time.

The second incident occurred on February 21, 2015. The landlord was spraying. The tenants testified that although they do not have a problem with spraying in general they were concerned about spraying on this particular day because of the wind conditions. The male landlord called several government offices to make inquiries but because it was a Saturday, none of them were open. Finally, he ended up calling the local fire department who suggested it might be a bylaw

issue and directed him to the local police. The male tenant called the police, who said they would look into it.

Sometime later four police cars attended at the rental unit. While the tenant was talking to the police one of the landlord's sons saw that the police were there and came to the rental unit. There was an argument between the son and the tenants.

Eventually the police left. No charges have been laid and there have been no repercussions to the landlord as a result of the tenants' inquiries.

A week later the landlord served the tenants with the notice to end tenancy.

The tenants paid the landlord the April rent in full. The landlord gave the tenants a receipt but it did not contain a notation such as "for use and occupancy only".

#### Analysis

On an application such as this the onus of proof is on the landlord to prove, on a balance of probabilities, that it has grounds within the meaning of the legislation for ending the tenancy.

Section 47(1)(d) of the *Residential Tenancy Act* allows a landlord to end a tenancy if the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; or put the landlord's property at significant risk. (Emphasis added). Just the fact that an action of the tenant upset or bothered the landlord is not sufficient grounds for ending a tenancy.

The incident in July occurred so far in the past that it is not relevant. Further, it was not sufficient to have ended a tenancy.

People have a legal right to make inquiries about the laws that may apply to their living situation. Doing so is not a reason for ending a tenancy, no matter how much the knowledge that the tenant was doing so irritated the landlord.

The tenants have no control over whether the police decide to send one, four, or a dozen cars in response to his inquiry. Since the police were not attending in response to criminal activity on the part of the tenants, their presence is not grounds for ending a tenancy.

I find that the landlords have not proven, on a balance of probabilities, that they have grounds for ending this tenancy. Accordingly, the 1 Month Notice to End Tenancy dated February 28, 2015, is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.

Further, as explained in *Residential Tenancy Fact Sheet 124: Re-instatement of Tenancies*:

“Where a landlord has served the tenant with a One-Month Notice to End Tenancy, and then accepts a rent payment for the month after the tenancy was to end, the landlord should clarify with the tenant whether they have reinstated the tenancy.

When a landlord does not want the tenancy to continue, the landlord should:

1. Specifically tell the tenant that the rental payment is being accepted for the use and occupancy only and does not reinstate the tenancy; and,
2. Tell the tenant that they must move out, as required by the Notice to End Tenancy.”

Even if the landlord had established grounds for ending this tenancy by accepting the April rent without giving the tenants a receipt that made it clear the payment was being accepted for use and occupancy only the landlord reinstated the tenancy, thereby annulling the effect of the notice to end tenancy.

#### Conclusion

The 1 Month Notice to End Tenancy dated February 28, 2015, is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.

As the tenants were successful on their application they are entitled to reimbursement from the landlords of the \$50.00 fee they paid to file it. Pursuant to section 72 that amount may be deducted from the next rent payment due to the landlord.

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 08, 2015

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Residential Tenancy Branch

