



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Kendall Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened as the result of the tenants' application for dispute resolution under the Residential Tenancy Act ("Act"). The tenants applied for an order cancelling the 1 Month Notice to End Tenancy for Cause ("Notice") issued by the landlords to the tenants.

The tenant, his witness, the landlord, and their witness attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, question the other party, and make submissions to me.

I have reviewed all oral, documentary, and photographic 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.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### *Preliminary matter-*

Prior to the start of the testimony, I instructed the tenant and landlord to have their respective witnesses leave the room out of audible range. When the time came for the tenants' witness to testify, the witness immediately began speaking, which led me to

conclude the tenant's witness was present for the entire hearing. As a result, I have excluded and not considered the testimony of the tenants' witness.

### Issue(s) to be Decided

Has the landlord submitted sufficient evidence to prove that they have cause to end this tenancy?

### Background and Evidence

I was presented evidence that this tenancy began on September 1, 2011, that the landlord's agent here took over management of this property on June 1, 2015 and that the rental unit is a single family dwelling.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenants the Notice. The Notice was dated August 28, 2015, was issued to the tenants by attaching the document to the tenants' door on that date, according to the landlord, and listed an effective end of tenancy of September 31 *[sic]*, 2015. The tenants submitted a copy of the Notice.

The causes listed on the Notice alleged that the tenants have allowed an unreasonable number of occupants in the rental unit and have put the landlord's property at significant risk.

In support of their Notice, as to their allegation that the tenants have allowed an unreasonable number of occupants, the landlord submitted that there are four people living in the rental unit, instead of the two tenants listed in the tenancy agreement. The landlord submitted further that the monthly rent is being paid by 3 people, not all a party to the tenancy agreement. I was not provided a copy of a written tenancy agreement.

The landlord confirmed that the rental unit consists of two floors and has 4 bedrooms, and submitted that the downstairs suite has an illegal kitchen and 2 bedrooms.

As to their allegation that the tenants have put the landlord's property at significant risk, the landlord submitted that there are unlicensed vehicles on the property and that a recreational vehicle is plugged into the rental unit. Additionally, the landlord submitted that there are a lot of items being left about the rental unit and that the rental unit is not well cared for.

The landlords' relevant evidence included a non-responsive, redacted copy of an email from the RCMP to the owner of the rental unit and photographs of the exterior and interior of the rental unit. The photographs show that the rental unit is located on a spacious lot.

*Landlord's witness-*

The landlord's witness stated that he is a contractor who works on the property and therefore was able to confirm that 4 people occupied the rental unit.

The landlord's witness stated further that there are unlicensed vehicles on the property, that the condition of the rental unit was dirty, and that the carport was full of items thrown all about.

The landlord's witness stated further that the stove was stuck to the wall and that the carport had ashtrays in an enclosed area.

*Tenant's response-*

The tenant submitted that he had an agreement with the previous manager that he could rent rooms to assist with the monthly rent, and that only his son and the son's girlfriend live in the rental unit with the two tenants. The tenant submitted further that his son and girlfriend have been living with the tenants since the tenancy began. The tenant denied that anyone else lived in the rental unit, as only his grandchildren come for visits, but do not stay the night.

As to the second allegations of the landlords, the tenant submitted that the appliances in the kitchen in the lower suite have been disconnected, as the stove did not work; however, even at that, the kitchen was in the rental unit when the tenancy began, according to the tenant.

As to the items depicted in the photographs of the landlord, the tenant submitted that these are refurbished so that he can donate them to the kidney foundation.

As to the fence as depicted in the landlord's photographs, the tenant submitted that the fence was broken when they moved into the rental unit.

### Analysis

Under section 47(1)(c) and (d)(iii) of the Act, a landlord may issue to the tenant a notice seeking to end the tenancy if the tenants have allowed an unreasonable number of occupants in the rental unit and have put the landlord's property at significant risk, as is the claim of the landlord here.

The landlord bears the burden of proving they have grounds to end this tenancy and must provide sufficient evidence to prove the causes alleged on their 1 Month Notice.

#### *Tenants have allowed an unreasonable number of occupants in the rental unit-*

I find the landlord has presented insufficient evidence to support that 4 people, in essence, two couples, living in a 4 bedroom, single family home to be an unreasonable number of occupants. I find this argument lacks logic. Further, I was not provided a written tenancy agreement which might otherwise dictate the number of occupants considered to be unreasonable.

I therefore find the landlord submitted insufficient evidence to prove this alleged cause for ending the tenancy.

#### *Tenants have put the landlord's property at significant risk-*

In reviewing the photographs of the landlord, which was the only non-oral evidence in support of this cause, I could not rely on the pictures of the broken fence, as there was no evidence to show that the fence had been damaged during the tenancy. The tenant submitted that the fence was in that state at the beginning of the tenancy, and there was no evidence from the landlord to show otherwise, such as may be contained in a move-in condition inspection report. I also considered that the attending landlord's agent have only represented the owner since June 2015, and would not have firsthand knowledge of the state of the fence at the inception of the tenancy.

As to the vehicles in the driveway, I find the landlord has not presented evidence to show how this has placed the property at risk. The land upon which the home is situated appears to be quite spacious and even if the vehicles are unregistered, if this were the case, I could not determine that this put the landlord's property at risk due to the lack of evidence from the landlord.

As to the state of the rental unit, while I accept that the landlord may have different standards of cleanliness and housekeeping from the tenants, if the state of the rental

unit were truly putting the landlord's property at risk, I would expect the landlord to have submitted a report from a health and safety expert specializing in this matter.

I could not conclude from the landlord's photographs that the landlord's property was placed at risk, and I therefore find the landlord submitted insufficient evidence to prove this alleged cause for ending the tenancy.

As I have found that the landlord has submitted insufficient evidence to support either cause listed on their Notice, I order that the Notice issued August 28, 2015, be cancelled and is of no force or effect. The tenancy will continue until otherwise ended in accordance with the Act.

### Conclusion

I grant the tenants' application seeking cancellation of the landlord's 1 Month Notice, with the effect that the tenancy continues until otherwise ended in accordance with the Act.

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: November 16, 2015

---

Residential Tenancy Branch

