



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VILLAGE GREEN ESTATES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

OPC – Landlord's application

CNC MNDC OLC PSF RPP LRE RR O FF – Tenant's applications

### **Introduction**

This hearing was convened to hear matters pertaining to cross Applications for Dispute Resolution filed by both the Landlord and the Tenant. The hearing was attended by an Owner and an Agent for the Landlord, the Tenant, and three Witnesses for the Tenant.

The applicant Landlord is listed as a Corporation on the Landlord's application. However, the Tenant listed the names of two Owners of the Corporation as respondents to her Application.

Section 1 of the Act defines a landlord in relation to a rental unit, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

Based on the above, I find the respondents listed on the Tenant's Application, and the Agent who appeared at the hearing, all meet the definition as a Landlord, pursuant to section 1 of the Act. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise

On January 14, 2016 the Landlord filed their Application seeking an Order of Possession for cause.

On January 6, 2016, the Tenant filed her application seeking the following: an order to cancel a 1 Month Notice to end tenancy for cause; a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; Orders the Landlord comply with the Act, Regulation, or tenancy agreement; provide services or facilities required by law; return the Tenant's personal property; suspend or set conditions on the landlord's right to enter the rental unit; allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, for other reasons, and to recover the cost of the filing fee from the Landlord.

On January 28, 2016 the Tenant filed an amended application seeking, among other things, to cancel a second 1 Month Notice to end tenancy served upon her after she filed her initial application.

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Tenant's application I have determined that I will not deal with all the dispute issues the Tenant has placed on their application and their amended application. For disputes to be combined on an application they must be related. Not all the claims on these applications are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the Tenant's request to set aside or cancel the two 1 Month Notices to End Tenancy issued for cause; and I dismiss the balance of the Tenant's claim with leave to re-apply.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The Tenant submitted 4 packages of evidence to the Residential Tenancy Branch (RTB) as follows: 43 pages received on January 6, 2016; 8 pages received on January 11, 2016; 6 pages received on January 28, 2016; 14 pages received on February 11, 2016; and 12 pages received on February 12, 2016.

The Landlord acknowledged receipt of two packages of evidence from the Tenant. Approximately 45 pages were received by registered mail on January 18, 2016 and a second package of documents was received with the Tenant's amended application including colored photographs.

Upon review of the evidence received by the Landlords I determined the Tenant had not served the Landlords with a copy of her tenancy agreement. The Tenant argued a copy was submitted in the Landlord's evidence.

The Landlord submitted two packages of evidence to the RTB in response to the Tenant's application and amended application as follows: 58 pages were received on February 11, 2016 and 20 pages were received on February 22, 2016. The Landlords affirmed they served the Tenant with copies of the same documents they had served the RTB.

The Tenant acknowledged receipt of two packages of documents from the Landlord. She argued she did not receive the second package until February 23, 2016, six days

before this hearing. The Tenant submitted she had time to briefly look at the second package of documents before the hearing which contained a cover letter and print outs of the RCMP general occurrence reports.

The Landlords submitted a copy of the 1 Month Notice issued December 30, 2015 as evidence in support of their application. It should be noted that all of the Tenant's evidence submissions listed the file number relating to her own application.

After a detailed review of service and receipt of evidence, I informed both parties that I would be accepting all relevant documentary evidence submitted by both parties, as evidence for these proceedings.

Rule of Procedure 7.20 provides the arbitrator may exclude witnesses from the dispute resolution hearing until called to give evidence. The arbitrator may, when they consider it appropriate to do so, exclude any other person from the dispute resolution hearing.

The Tenant's three witnesses had called into the teleconference hearing at the outset of the hearing. All three were advised that I would be calling them back into the hearing within the next hour if I would be hearing their testimony during this proceeding, pursuant to Rule of Procedure 7.20. Each witness left their telephone number with me prior to disconnecting from the hearing.

During the course of the hearing Witness 1 was called back into the hearing to provide affirmed testimony. The Landlords were given the opportunity to question Witness 1 and declined. The Tenant had submitted written statements into evidence from all three witnesses. Therefore, as the hearing time was about to expire I informed the parties that I would not be calling Witness 2 and 3 back into the hearing to provide oral testimony. I explained I would consider all Witness statements that were submitted into evidence. Both parties were given an opportunity to respond to the foregoing and no objections or concerns were raised.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

1. Should the 1 Month Notice to end tenancy issued December 30, 2015 be upheld or cancelled?
2. Should the 1 Month Notice to end tenancy issued January 25, 2016 be upheld or cancelled?

#### Background and Evidence

The parties entered into a month to month tenancy agreement which began on June 1, 2013. Rent of \$975.00 was initially payable on the first of each month and was subsequently increased to \$1,020.00 per month. On May 2, 2013 the Tenant paid \$487.50 as the security deposit.

The Landlord stated their Agent has been employed for approximately three years to manage the rental complex. The Agent resides in the rental unit complex which is comprised of 6 buildings with 23 townhomes and some apartments. The Tenant currently resides in a townhome with units attached on either side of her rental unit that are occupied by other tenants. The complex was described as being occupied by tenants with an average age over 60 years old. Many of the occupants take part in social functions within the complex community.

Shortly after the Tenant moved into her rental unit new tenants moved into the unit beside the Tenant. The new tenants were referred to as being a male and female couple. Therefore, for clarity, the female and male tenant who reside beside the Tenant and who are subjects of the following complaints, will be referred to as Ms. C. and Mr. C. for the remainder of this Decision.

Each party submitted documentary evidence regarding complaints and issues that arose between the Tenant and her neighbors, Mr. C. and Ms. C. Those previous issues occurred between 2013 and July 2014. The July 2014 issue involved complaints of Mr. C's use of a briquette BBQ.

The Landlords testified things were relatively quiet between the Tenant, Mr. C., and Ms. C. during 2015. Then events occurred at the end of December 2015 where the police were called twice by the Tenant complaining about Mr. C.

On December 29, 2015 the Landlord served the Tenant with the first 1 Month Notice when it was posted to the Tenants door. The first 1 Month Notice was issued pursuant to Section 47(1) of the Act listing an effective date of January 31, 2016 for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord
  - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord

On January 25, 2016 the Landlord served the Tenant with the second 1 Month Notice when it was posted to the Tenants door. The first 1 Month Notice was issued pursuant

to Section 47(1) of the Act listing an effective date of February 29, 2016 for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord
  - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord

The Landlord testified they served the second 1 Month Notice after they were advised they had listed an incorrect effective date on the first 1 Month Notice. The Landlord stated they had not accounted for the time to allow for service based on the method of service they used. They also did not consider when the Tenant would receive the first Notice when they wrote the effective date.

The Agent testified the 1 Month Notices were served upon the Tenant after they received, in her opinion a very serious complaint, from Mr. C. and Ms. C. The Agent asserted the complaint received from Mr. C. and/or Ms. C. related to two incidents where the Tenant called the police in December 2015 regarding complaints against Mr. C. and Ms. C. The Agent argued that the Tenant's actions of calling the police was, in the Agent's opinion, evidence the Tenant had harassed Mr. C. and Ms. C. The Agent pointed to the police reports submitted into evidence and asserted they were harassment because the complaints were unfounded.

The Agent submitted they have been dealing with complaints between the Tenant and Mr. and Ms. C. for over 2 ½ years. The Agent stated they feel the Tenant's complaints are "always" unfounded. The Agent spoke about a complaint the Tenant raised about Mr. C.'s briquette BBQ which occurred in 2014. Mr. C.'s BBQ was removed at the end of July 2014. The Agent testified there was always things the Tenant did not like with what Mr. C. was doing; however, she said after the July 2014 BBQ issues were resolved, things were relatively quiet between the two neighbours until the police were called around Christmas of 2015.

The Agent testified they had offered the Tenant a different rental unit away from Mr. C. in 2014. She said the Tenant refused to take the unit because she was waiting to have some surgery. The Agent said she even offered to keep the unit until the Tenant was able to accept it.

The Landlord asserted the Tenant's actions have disrupted a very close community and has created uneasiness in the community. He said they requested the Tenant attend a meeting to discuss her latest complaints. The Landlord stated it was during that meeting

that the Tenant became very upset and did not want to stay at the meeting partly due to the Agent being present. He asserted when they brought up the police complaints the Tenant became upset and left the meeting.

The Landlord argued the Tenant simply refused to work with him and the Agent to resolve the issues. He stated because they felt the calls to the police were harassment they decided to issue the Tenant the 1 Month Notice.

The Tenant testified she had been shown two other rental units. She argued the Agent did not tell her she would hold the unit the Tenant liked until she was able to move in. Rather the Agent told her the unit was already re-rent. The Tenant asserted the other unit was not suitable for her as it had a smart meter and she had sensitivity to living near smart meters.

The Tenant acknowledged she had made two calls to the police one on December 25, 2015 and the other on December 26, 2015. She stated she had heard loud banging and yelling coming from Mr. C.'s unit for over four hours during the evening of December 25, 2015. She said by the time she called the police and they arrived the banging had stopped. She stated she was told by the police officer to call sooner next time, as soon as the noise disturbance occurred which is what she when she called the police on December 26, 2015.

The Tenant asserted Ms. C. used to be her friend and the Tenant was concerned that Ms. C. may have been being abused. She argued she and Witness 1 had seen Ms. C. crying in the back yard. The Tenant said when the disruption at Mr. C's unit started up again the morning of December 26, 2016 she felt it necessary to follow the police officer's instructions and called the police right away.

The Tenant testified she had arranged for her neighbour E.L. (Witness 1), to attend the Landlord's meeting with her which was scheduled by the Agent to discuss her calling the police. When they arrived Witness 1 was told by the Landlord that he was not allowed to attend the meeting and had to leave. The Tenant stated Witness 1 remained in the Landlord's waiting room until she came out of the office. The Tenant stated she felt the Agent's tone of voice was intimidating and she felt like she was being abused being forced to be in that meeting all alone.

The Tenant argued the Agent has a social bias towards Mr. C. because she has seen the Agent visiting and drinking with Mr. and Ms. C. The Tenant asserted the Agent has a very congenial relationship with Mr. and Ms. C. despite the issues created by Mr. C.'s

actions which have affected her and numerous other residents, as supported by the statements she submitted into evidence.

The Tenant spoke about vandalism which had occurred to Witness 1's rental property on December 24, 2015 and how Witness 1 had called the police regarding that vandalism. She also submitted evidence that Witness 2 had been at Witness 1's house when the loud bang occurred during the evening of December 25, 2015. She said Witness 2 had come to check on her to make sure she was okay after the bang occurred at which time Witness 2 heard the other noises comes from Mr. C.'s rental unit.

All three of the Tenant's witnesses had submitted written statements into evidence outlining events they witnessed that involved Mr. and/or Ms. C. causing disruptions.

Witness 1 was called back into the hearing and provided affirmed testimony how he was the person who called the police when his property had been vandalised on December 24, 2015. He stated he assumed it was Mr. C. who caused the damage based on past experiences. He testified that since calling the police he thought that maybe someone else had committed the vandalism. Witness 1 stated that after he filed the complaint he thought it could have been related to the construction crew who replaced the eves trough because he had reported to the Agent that crew had cracked his window.

Witness 1 spoke about how Mr. C.'s BBQ was too close to the building. He stated that he had heard from the Tenant about how the BBQ issue was being resolved. He said he recalled that it was sometime after the July 2014 BBQ issue when he saw Ms. C. in the back yard crying and being upset. Witness 1 argued Mr. C. was creating a fire hazard by having his briquette BBQ so close to the building.

Witness 1 argued the Tenant has only done things to make their community a better place to live. He spoke about how the Tenant had arranged an emergency response meeting and invited the Agent and Landlord to attend and neither one of them showed up to the meeting. He said he has only seen the Tenant be helpful to other tenants and do things in order to make their homes safe.

Witness 1 testified he had attempted to accompany the Tenant to the meeting which was scheduled by the Agent and the Landlord at the end of December 2015. He confirmed that he was not allowed to enter the office to attend the meeting and was told to leave. He said he refused to leave and told the Landlord he wanted to speak with the Landlord after the meeting. He said that when the meeting was over the Landlord refused to speak with him and simply left.

The Landlord confirmed he told Witness 1 he could not attend the meeting. When I asked the Landlord why he refused the Tenant the ability to have someone attend as support for her during the meeting, the Landlord said it was for "privacy". When I asked several times what privacy the Landlord simply kept on repeating for "tenant privacy".

The Tenant stated she was extremely distressed by having to meet with the Agent and Landlord in that fashion. She argued the Agent had a very angry tone and she simply could not remain in a meeting like that and had to leave.

The Tenant stated since the onset of her tenancy she did her best to communicate with the Agent and Landlord to report her concerns via email and the Agent would not respond in a timely manner.

The Agent argued they were having problems with their emails and requested the Tenant put her concerns in writing and drop them off. She asserted when they received the written concerns they acted on them as soon as possible.

The Agent reiterated her previous statement that because the December 2015 police complaints were marked as being unfounded they were, in her opinion, harassing.

The Tenant submitted that she was relieved to find out the reports were unfounded as Ms. C. used to be her friend and she would not want to see her be abused. She argued that does not change the fact there was excessive noise with doors slamming and the loud bang that the Tenant had heard in her residence and that Witness 2 had heard while sleeping in Witness 1's rental unit.

At this point the hearing time was about to expire so I asked the Tenant to clarify what her remaining two witnesses would be testifying about. The Tenant stated Witness 2 would be speaking about the noise he heard the evening of December 25, 2015 as written in his statement submitted into evidence. The Tenant stated Witness 3 and another witness had also provided evidence in the form of written statements which were included in her documentary evidence.

Based on the above, I advised both parties that I would be considering all documentary evidence that was before me, including the witness's statements of those witnesses who were not called back into the hearing to submit oral testimony. Each party was given one last opportunity for final submissions or questions at which point they each stated they had nothing further to comment to or add.



Although I have considered all relevant documentary evidence before me, due to the volume of that evidence not all of the relevant submissions have been listed in this Decision.

### Analysis

After careful consideration of the foregoing and on a balance of probabilities I find as follows:

Section 53(1) of the Act stipulates that incorrect effective dates are automatically changed if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division; the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

Section 53(3) of the Act states in the case of a notice to end a tenancy, other than a notice under section 45 (3) [*tenant's notice: landlord breach of material term*], 46 [*landlord's notice: non-payment of rent*] or 50 [*tenant may end tenancy early*], if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

- (a) that complies with the required notice period, or
- (b) if the landlord gives a longer notice period, that complies with that longer notice period.

In this case rent was payable on or before the first of each month; therefore, if a Notice to end tenancy is issued on the eighth day of a month the notice would be effective on the last day of the following month, pursuant to section 53 of the Act.

Upon review of the first 1 Month Notice to End Tenancy issued December 30, 2015, I find the Notice to be issued in accordance with sections 47 and 53 of the Act, listing an effective date of January 31, 2016. I make this finding in part because the Tenant submitted evidence on her application for Dispute Resolution that she received the first 1 Month Notice on December 30, 2015. Therefore, as rent was payable on the first of each month and the first 1 Month Notice was issued and received on December 30, 2015, the correct effective date was January 31, 2016.

Residential Tenancy Policy Guideline 11 provides that as a general rule it may be stated that the giving of a second Notice to End Tenancy does not operate as a waiver of a Notice already given. I concur with this policy and find it relates to the matters in this case.

Upon review of the second 1 Month Notice to End Tenancy issued January 25, 2016, I find this second Notice to be issued in accordance with sections 47 and 53 of the *Act*, listing an effective date of February 29, 2016.

By their own submissions the Landlords were of the opinion that the first 1 Month Notice was invalid so they served the second 1 Month Notice listing the exact same reasons to replace the first 1 Month Notice.

As indicated above, both 1 Month Notices were valid Notices and the second Notice did not cancel out the first Notice, pursuant to Policy Guideline 11. The Landlords confirmed no other incidents occurred between December 30, 2015 and January 25, 2016, the date the second Notice was issued. Therefore, I will determine the effectiveness of both Notices based on the exact same reasons.

Section 47 of the *Act* provides that a landlord may end a tenancy by giving notice to end the tenancy if specific circumstances apply. Section 47(e) provides for ending a tenancy when the tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord; or, seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Where a Notice to End Tenancy comes under dispute, the Landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons.

Notwithstanding the Landlord and Agent's submissions that the Tenant was harassing Mr. C and Ms. C because the police complaints were unfounded, I find there to be insufficient evidence to prove the Tenant's actions of calling the police on December 25 and 26, 2016 constituted harassment. I further conclude there was insufficient evidence to prove this Tenant significantly interfered with or unreasonably disturbed another occupant or the landlord; or, seriously jeopardized the health or safety or lawful right of another occupant or the landlord. Rather, the evidence suggests it was the actions of Mr. and/or Ms. C. causing a loud bang and noises on December 25 and December 26, 2015 which unreasonably disturbed the Tenant, Witness 1, and Witness 2.

I find the Tenant's actions of calling the police on December 25 and December 26, 2015 to be reasonable given the circumstances presented to me during the hearing and as supported by the documentary evidence. By her own submission, the Agent confirmed issues between Mr. C. and the Tenant had been calm after the July 2014 BBQ issues and prior to the calls to the police by the Tenant on December 25, 2015.

In regards to the BBQ issues which occurred in 2014, I find there was sufficient evidence to prove the Tenant was justified with her safety concerns regarding Mr. C. using his briquette BBQ so close to the building. Those concerns were supported by the information issued from the fire department which caused Mr. C. to have to move and/or cease use of the briquette BBQ.

In addition to the foregoing, I find the manner in which the Landlord and Agent refused Witness 1 the ability to attend their scheduled meeting as support for the Tenant to be intimidating to the Tenant. I further accept that the Landlord's and Agent's actions could be seen as them exerting power or authority over the Tenant. I do not accept the Landlord's submission that Witness 1 could not attend that meeting as support for the Tenant simply due to tenant privacy; as Witness 1 was a tenant in the complex and had been witness to and/or involved with the issues involving Mr. C. and Ms. C. for several years. If privacy was really a concern for the Landlord and Agent they ought to have suggested that the Tenant find a neutral party attend with her for assistance and offer to reschedule the meeting until the Tenant was able to arrange for a different assistant or advocate. I conclude the Tenant had every right to have an assistant or advocate attend with her to such a meeting to provide support and/or assistance, especially considering the age of these tenants, as identified by the Landlord himself.

I do not accept the Landlord's and Agent's submissions that the Tenant's calls to police were forms of harassment simply because the police reports were marked as being unfounded. The files marked as being unfounded could also be an indication the disturbances had stopped by the time the police had arrived and is therefore, not conclusive evidence that the disturbances had not occurred prior to the police officer's arrival.

I further find it was reasonable for the Tenant to call the police on December 25 and 26, 2015 given the evidence of the level of noise and concerning sounds that were being emitted from Mr. C.'s rental unit, prior to the police arriving.

I find the Tenant had acted accordingly by initially seeking assistance from the Agent to resolve issues that arose between her and her neighbor Mr. C. in 2013 and 2014, When the Agent failed to take action regarding the fire security issue regarding Mr. C.'s BBQ, I find the Tenant took reasonable action by seeking a report from the fire department. It was that fire department report which resulted in the Agent taking appropriate action by ensuring Mr. C. removed his briquette BBQ to eliminate the fire concerns being created by his BBQ.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

In regards to when the Agent offered the Tenant a different unit to move into, I find there was insufficient evidence to prove the Agent had offered to hold the other unit indefinitely for the Tenant. Although the undisputed evidence was there have been issues between the Tenant and Mr. C.; there was no evidence before me that would suggest the Landlord or Agent ever offered Mr. C. the opportunity to move and there

was no evidence that the Landlord or Agent issued Mr. C. and Ms. C. letters regarding their involvement in the reported issues.

Based on the totality of the evidence before me, I find there was sufficient evidence to uphold the Tenant's application to cancel the Notices to end tenancy. Accordingly, I cancel the 1 Month Notice to end tenancy issued December 30, 2015 and I cancel the 1 Month Notice to end tenancy issued January 25, 2016. As such, this tenancy continues to be in full force and effect until such time as it is ended in accordance with the *Act*.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act.

The Tenant may deduct the one time award of \$100.00 from her next rent payment as full recovery of her filing fee. In the event the Tenant's rent is paid in a fashion which prevents that deduction, the Tenant has been issued a Monetary Order. This order must be served upon the Landlord and may be enforced through Small Claims Court.

I have upheld the Tenant's application and cancelled the two 1 Month Notices; therefore, I find the Landlord submitted insufficient evidence to uphold their requests for an Order of Possession. Accordingly, the Landlord's application is dismissed in its entirety, without leave to reapply.

### Conclusion

The Tenant was successful with her application and both 1 Month Notices to end tenancy were cancelled. The Tenant was awarded recovery of her \$100.00 filing fee. The Landlord's application was dismissed, without leave to reapply.

This decision is final, legally binding, and 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: March 04, 2016

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Residential Tenancy Branch

