



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Locke Property Management Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, MNDC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end the tenancy for cause and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The hearing did not conclude on the first scheduled date and was adjourned to a specific date and time for continuation. The tenant and an agent for the landlord attended the hearing on both scheduled dates, and the tenant was accompanied by an advocate and a support person, who did not testify or take part in the proceedings.

The tenant and the landlord's agent each gave affirmed testimony and the landlord called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness with respect to the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Has the landlord established that the 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for a hydro rebate, interference and loss of quiet enjoyment of the rental unit?

### Background and Evidence

**The landlord's agent** testified that this month-to-month tenancy began on August 28, 2006 and the tenant still resides in the rental unit. Rent in the amount of \$802.00 per month is currently payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$325.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a townhouse in a complex containing 36 units. A copy of the tenancy agreement has not been provided by either party.

The landlord's agent further testified that the tenant was served with a 1 Month Notice to End Tenancy for Cause on January 25, 2016. A copy of the notice has been provided and it is dated January 25, 2016 and contains an effective date of vacancy of February 29, 2016. The reason for issuing the notice is: "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord."

The parties had been to Arbitration in December, 2015 and the parties agreed to settle that dispute. A copy of the resulting Decision has been provided by the tenant which is dated December 15, 2015 and states that the parties reached the following agreement:

- The tenant agreed that the former occupant GG will no longer reside in the rental unit;
- The tenant agreed that there will be no further significant disturbances allowing for normal living noise in adjoining units;
- The landlord agreed to withdraw the One Month Notice to End Tenancy for Cause dated September 30, 2015 and that the tenancy can continue until legally ended under the *Act*.

The landlord's agent also testified that the tenant agreed to cease smoking pot. However, since that hearing, there have been continuing complaints from other tenants, and the landlord has provided copies of letters from other tenants whose units are on either side of the tenant's rental unit.

**The landlord's witness** testified that he is the property manager for the rental complex, and on January 25, 2016 he attached a 1 Month Notice to End Tenancy for Cause to the screen door of the rental unit.

The witness also testified that the notice was issued for multiple reasons, including the smell of pot going into other units. That complaint is corroborated by another tenant's statement, a copy of which has been provided. The statement is dated January 7, 2016

and states that the day prior, the writer was invited to another tenant's unit and smelled marihuana. Other letters dated in September and November, 2015 have also been provided. A letter from the unit next door to the rental unit is dated January 7, 2016 and states that the writer's unit smells like marihuana again, and that the writer awoke on the morning of January 7 to the tenant yelling and screaming at someone. Another letter from the same tenant dated January 16, 2016 states that the writer is getting sick of the smell of marijuana, and suggests that the landlord pay for the person's moving expenses.

Other letters have also been provided, wherein a tenant complains of the tenant's teenagers bullying, which has been going on for a number of years and is affecting that tenant's private life. Other complaints include the tenant and her daughter fighting in the parking lot, yelling, screaming and on-going behaviour. Issues have gone on too long and things haven't changed a lot since the hearing in December, 2015. The tenant has received several warning letters over the years, and on January 7, 2016 is the latest written warning concerning complaints received, and any further written complaints will result in the tenancy being ended. The landlord and the witness have to consider other tenants.

With respect to the tenant's monetary claim, the landlord's witness testified that the tenant's claim refers to a heat rebate, which the tenant received. The tenant has not been treated any differently than any other tenants in the complex.

**The tenant** testified that with respect to the bullying allegation, the mother of the child that was bullied was screaming and the tenant's son was screaming at the other child. The tenant didn't see what had happened. The mother of the child would not calm down, and everyone was shouting over each other. The tenant had to go to work.

The tenant has not been smoking anything at the house since January 7, 2016, not wanting to get into more trouble. The letter from the landlord has an incorrect date on it and should read 2016, not 2015. The tenant complied with the letter. Others in the neighbourhood smoke pot. The neighbour who complained was well aware of that before she moved in. The tenant has also provided a letter from another tenant who states that in the 4 years of the person's tenancy, the person knows for a fact that the pot smoking has been there for years, and from probably 8 to 12 other tenants. Another tenant also writes a similar statement adding that it would be discriminatory to evict only one.

The tenant also testified that she can hear the TV and people talking in the units beside the tenant's rental unit, and although some of the tenant's conversations may be abit

loud, the tenant denies screaming or fighting with her daughter, and tries to make allowances for others' noises.

The tenant is also employed by the landlord company and in April, 2015 the new property manager took over and everyone was happy until then. The tenant's work hours were 6, increased to 10 hours, but in October, 2015 the job description was changed which disallows the tenant to work less than 2 hours at a time. The property manager was at the tenant's home all the time, yelled at the tenant, and the tenant never knew what to expect. There was no proper communication. The tenant has anxiety issues and gets a little loud, but the property manager screams at the tenant.

The hearing in December, 2015 resulted in the tenant agreeing to have the tenant's boyfriend move out, and he left in September. She also agreed that there would be no more significant disturbances allowing for normal noise, and the landlord agreed to withdraw the notice to end the tenancy. There was nothing about marihuana smoking.

With respect to the tenant's monetary claim, the tenant testified that the landlord gave a previous notice to end the tenancy, then agreed that the tenant had no pets and withdrew the notice. The landlord then took the tenant to arbitration again. The landlord continues to evict the tenant for no reason. The tenant's boyfriend moved out, the tenant stopped smoking pot, told her parents not to bring their small dog to the rental unit, and the tenant is still accused of being noisy. The tenant has been bullied by the landlord's property manager and has accused the tenant when the noise is from neighbours.

The tenant's application seeks \$4,600.00 in compensation but has not provided a break-down of damages claimed. However the tenant withdraws the claim for the hydro rebate.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that the notice was issued in accordance with the *Residential Tenancy Act* which can include the reasons for issuing it. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute, and the onus is on the landlord to establish that there have been disturbances significant enough to justify ending a tenancy.

The landlord's position is that the tenant has been given numerous warnings about marihuana smoking and noise from the rental unit, and that the parties came to an agreement wherein the tenant agreed to no further disturbances, and the focus of that

was mainly on marihuana smoking. The tenant denies that was the focus, however also testified that there has been no smoking of any substance in the rental unit since January 7, 2016, the date the tenant received a warning letter from the landlord. The tenant has also provided evidentiary material of other tenants agreeing that several people in the neighbourhood smoke it. I am not satisfied that the landlord has established that any or all of the smell originates or originated from the rental unit.

The tenant also testified that everyone was happy prior to the current property manager being hired, but considering the warning letters the tenant has provided dating back to 2008, I find that is not the case.

The tenant in her own testimony stated that she has anxiety issues and gets loud. I find that is the basis of the disturbances, and I also find that the tenant agreed to correct that, considering usual household noise. The problem, in my opinion, is the differences in the interpretation of "allowing for normal living noise in adjoining units," which is what the parties agreed to in December, 2015.

Overall, it is not up to me to determine whether or not the smell of marihuana originates from the rental unit or several others. My duty is to determine whether, in all the circumstances, the landlord has established that the landlord had cause to issue the notice to end the tenancy. Considering the numerous warning letters, complaint letters received by the landlord from other tenants, and the admission of the tenant that she gets loud, I find that the tenant's interpretation of normal living noise to be more than anticipated by the landlord when the parties made the agreement to settle the dispute in December, 2015, or tolerable by neighbours. In the circumstances, I find that the landlord had cause to issue the notice, and the tenant's application to cancel it is dismissed.

With respect to the tenant's monetary claim, in order to be successful, the tenant must establish that the tenant suffered damages or loss as a result of the landlord's failure to comply with the *Act* or the tenancy agreement. Having found that the landlord had cause to issue the notice, and considering the evidentiary material of the parties, I am not satisfied that the landlord, by issuing letters warning the tenant of what the landlord believed to be infractions of the tenancy agreement and the *Act*, constitute harassment. I find that the tenant has failed to establish that the landlord has failed to comply with the *Act* or the tenancy agreement, and the tenant's application for monetary compensation is hereby dismissed.

The *Residential Tenancy Act* specifies that where a tenant's application to dispute a notice to end the tenancy is dismissed, or where the notice to end the tenancy is upheld, I must grant an Order of Possession in favour of the landlord, so long as the

notice is in the approved form. I have reviewed the 1 Month Notice to End Tenancy for Cause dated January 25, 2016 and I find that it is in the approved form and contains information required by the *Act*. Since the effective date of vacancy has passed, I grant the order on 2 days notice to the tenant.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: March 31, 2016

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Residential Tenancy Branch