



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, OLC, LAT, LRE, FF

### Introduction

This hearing dealt with an application by the tenants for orders setting aside a 1 Month Notice to End Tenancy for Cause; compelling the landlord to comply with the Act, regulation or tenancy agreement; limiting the landlord's right of entry; allowing the tenants to change the locks; and granting them a monetary order. Both parties appeared and had an opportunity to be heard. No issues regarding the exchange of evidence were identified.

### Issue(s) to be Decided

- Is the 1 Month Notice to End Tenancy for Cause dated August 4, 2016 valid?
- Should the landlord's right of entry be restricted and, if so, upon what terms?
- Should the tenants be allowed to change the locks?
- Should any other order be made against the landlord and, if so, in what terms?
- Should a monetary order be granted to the tenants and if so, in what amount?

### Background and Evidence

This tenancy commenced November 1, 2013. For the first two years the monthly rent, which is due on the first day of the month and includes hydro, was \$1100.00. For the past year the rent has been \$1127.00.

The rental unit is the upper level of a house. There is a second rental unit on the lower level. The landlord has reserved some storage space on the lower level and the garage for his exclusive use.

At the beginning of July the landlord and his wife decided to sell this property. They are an older couple. They testified that they had found their dream retirement home and they need to sell this property to make their dream come true.

The landlord advised the tenants that they were going to list the property. There was a little wrangle at the outset regarding the arrangements for photographing the unit and having the first group of realtors look at the property but that was resolved.

The first showing of the unit was on July 14.

Both parties filed copies of the text message and email communications between the landlord and the male tenant; and between the real estate agent and the male tenant. A review of the evidence shows that at the beginning, in addition to arranging showings, a significant part of the communication between the male tenant and the real estate agent was devoted to establishing that they were both brothers in the union movement and the Masons.

At the beginning when the agent advised that "There will be 2-3 groups between 5:30 - 6:30 thanks again" the tenant's response was that they were expected only one group. The agent explained: "I have pushed 3 groups with interest into the one time instead of 3 different time," to which the tenant responded "Yeah that's better I guess". The tenant expressed unhappiness with how long it might take with three groups coming through because their little boy was sick and cranky.

Arrangements had been made for entry for photographs. The agent advised the tenant that he had a request for a showing for later that evening but he was "wondering if I could try to get this agent and her buyers in for a look at the same time I'm there instead of 6 - 7 pm. Let me know I want to make this process as convenient as possible for you"; to which the tenant replied: "Yeah, that's no worries, it makes sense to have both parties come in at the same time for our sake anyways. Two birds with one stone."

On July 14 the realtor advised the tenant that he had two groups who want to look at the unit the following day. At 9:25 the following morning the tenant advised the agent that they want to cancel the showings because they had not received 24 hour notice. An hour later the male tenant advises the agent to come at 2:30 pm as requested: "Bring as many people as you want – we found a better place at a lower priced."

On July 16 the realtor asks if he can bring a group the following day. The male tenant responds that they would prefer not to have a showing on that day. The agent agrees to this request.

On July 21 there was a flurry of messages from the agent for showings. The final one was at 9:30 pm to which the male tenant responded: "Hey man don't text me at this time of night. Fuck off. Seriously. Nobody is coming tomorrow." The female tenant testified that the noise of the incoming text had woken their little boy which irritated the male tenant.

On July 22 the agent advised the tenant about a showing the following day. He says: "If you want to pick some days/times for showing we could try that instead. Happy to work with you to continue giving more than 24 hrs notice if you prefer that instead."

The next day the tenant responds that they would be willing to have showings on Monday and Thursday, 1:00 to 4:00 pm. There does not appear to be a response to the tenant's proposal.

On July 25 the agent asks the tenant about showing the property on Wednesday July 27. The tenant agrees to the showing.

On July 26 the landlord served the tenants with a 1 Month Notice to End Tenancy.

On the afternoon of July 27 the male tenant sent the agent the following message:

"Hello brother squire. We'd appreciate if you stop communicating with us. Text message and email is an informal way to communicate with use and serve 24 hours notice. It's the landlords responsibility to provide written notice. Yesterday at 8:00 pm [the landlord] served us with a 1mon eviction notice due to fuss you've created. Thanks for trying to strong arm me Brother. Don't call, email or text message me ever again."

An hour later the tenant sent this message to the agent: "I'm cancelling your two showings today because the landlord used an unacceptable method of providing notice."

The landlord testified that he had given the notice because the number of refusals by the tenants for showings appeared to be increasing.

In an effort to have the sale of the house proceed the landlord withdrew the notice the next day. One of the reasons why the landlord was prepared to continue with these tenants was that they kept the unit in immaculate condition.

On August 2 the landlord gave the tenants notice that they might be bringing buyer to view the property and the unit on:

Tuesdays between 1:00 pm and 3:00 pm

Thursdays between 1:00 pm and 3:00 pm

Saturdays between 1:00 pm and 3:00 pm

The tenants countered in an e-mail by offering viewing every Thursday and Saturday, 1:0 pm to 4:00 pm.

On August 4 the landlord served the tenants with a new 1 Month Notice to End Tenancy for Cause. The reasons stated on the notice were that the tenant or a person permitted on the property had significantly interfered with or unreasonably disturbed another occupant or the landlord and/or seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord then served the tenants with a new notice dated August 8, 2016 stating that they might be bringing buyers to view the property and the rental unit on the following dates and times. This time, instead of saying Tuesday, Thursdays and Saturdays generally the landlord listed each individual Tuesday, Thursday and Saturday from August 11 to September 3.

The tenant responded that the schedule was unreasonable and insisted, based upon the wording of the Residential Tenancy Website, that they must be given a separate notice of entry for each showing.

There was continual conflict between the landlord and the tenants in August

At first the landlord tried to follow the schedule of showings but the tenants refused entry because proper notice had not been given. From August 21 on the landlord gave the tenants a written notice for every showing. The tenant insisted that a separate notice had to be given for each group, even if multiple groups were scheduled for the same time. If the agent brought more than one group the tenant would only allow entry by one group and refuse entry to the other groups. Further, if the tenants felt they had not received proper notice of entry, they would refuse entry. The landlord and the tenant gave different estimates of the number of times on which this occurred. The tenant said that about six to eight groups were turned away; the landlord said more were turned away than allowed in.

The landlord testified that after July 26 the tenants never answered the door, even when they were home. This meant that three days had to be added to the date of the entry. The female tenant testified that they did not deliberately ignore the door; they were just busy with their little one or doing other things.

The landlord testified that when you are giving notice four days in advance it was difficult to include all the parties that might express an interest in the intervening days. He also expressed the view that the intention of grouping showings together was to reduce the inconvenience to the tenants.

Many of the groups who were turned away, some of whom had come from out-of-town refused to return. The landlord filed evidence that showed that three of the potential purchasers who were turned away were investors who wanted to keep the house as an investment property. None of them would come back, even with a new notice of entry.

The female tenant testified that:

- Having extra groups show up unannounced was stressful.
- Showings with multiple groups took longer than showings with just one group.
- Each group took about 15 minutes.
- There were about five groups per week viewing the property in July.
- Two viewing opportunities of three hours each was less stressful than three viewing opportunities of two hours each.

The female tenant also testified that:

- They were not consulted on the first schedule presented by the landlord.
- They wanted to have a say as to when people would be in their home.
- The thought there should be some dialogue about the showing schedule.
- They wanted to make it clear to the landlord that they would not agree to a schedule in which they had no say.
- The issue was respect and dignity.

The female tenant testified that the landlord deliberately brought extra groups knowing that they would turn them away and in doing so was trying to create an unlivable situation for them. The landlord testified that the tenants were trying to make things as inconvenient as they could because they found out that they were paying below market rent for the unit.

At the end of August two things changed. The male tenant went back to work out-of-town after spending July and August at home, and the landlord changed realtors.

The landlords decided to change realtors because the first real estate agent had become so frustrated with the obstacles presented by the tenants. The landlord felt that if they changed to a different commission structure with a different agent the new agent might be more willing to put in the extra effort required in this situation. He testified that the change did result in an interruption in the showings of the unit.

The new agent and the female tenant have been able to work together:

- They are communicating by text message.
- Written notices of entry delivered to the rental unit are not being required.

- They have agreed on a showing schedule.
- Showings are proceeding smoothly.
- The tenant is agreeing to home inspections occurring outside of the viewing schedule.

The tenant testified that since the new realtor has come on they have not refused entry to anyone.

As of the date of the last hearing the house had still not sold, even though the price had been reduced by \$10,000.00. The landlord testified that they have received several offers for the house – one in July; at least two in August; and another in September. He testified that all of the offers have fallen through because the purchasers could not secure the necessary financing. The landlord argues that the tenants' lack of cooperation has prevented them from selling the house. In particular, he asked how many offers had they lost because the potential purchaser had been turned away and never came back.

The landlord pointed out that they have not served a notice to end tenancy on the tenants of the lower unit and have no intention of doing so unless the ultimate purchaser requires the space for their own use.

### Analysis

Both parties gave evidence of various disputes about yard maintenance, parking and access; some of which resulted in calls to the police, none of which resulted in charges being laid. In my opinion these were just part of the ongoing power struggle between the landlord and the tenants. This was made very clear in the female tenant's evidence about the August 5 episode about which she said the whole point was to establish that they should not have to ask anyone to let them out of their driveway. The tenants' behaviour on these occasions was not sufficient to end the tenancy; the landlord's behaviour was not sufficient to warrant any order being made against him.

Much of this dispute was based upon the respective party's understanding of the applicable law and their insistence that the other side adhere to their understanding of their rights. The tenants relied on the exact wording of the Residential Tenancy Branch website; the landlord relied on advice from a well-established landlord association.

The website states that if a landlord and a tenant cannot agree in writing on a schedule for viewing times "the landlord must give the tenant 24 hours written notice of each showing of the unit (these showings may be on the same day or on a reasonable number of days).

First of all, the website is not clear as to whether “showing” means the block of time that has been set aside for the landlord and/or realtor to show the unit, regardless of the numbers of potential purchasers that may view the unit during that block of time, or each individual group of potential purchasers looking at the unit during that block of time.

Secondly, the website attempts to provide an interpretation of the legislation, in very simple layman’s language, for the assistance of landlords and tenants. However, in the case of any dispute it is the actual wording of the legislation that applies.

Section 29(1) of the *Residential Tenancy Act* states that a landlord must not enter a rental unit except in certain specific situations which include:

- (a) “the tenant gives permission at the time of entry or not more than 30 days before the entry”; and,
- (b) “at least 24 hours and not more than 30 days before the entry the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose of the entry, which must be reasonable;
  - (ii) the date and time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

Section 28(3) of the *Interpretation Act* states that in an enactment words in the singular include the plural, and words in the plural include the singular.

As a result section 29(b) actually should be read as follows:

- (c) “at least 24 hours and not more than 30 days before the entry(s) the landlord(s) gives the tenant(s) written notice that includes the following information:
  - (i) the purpose(s) of the entry(s), which must be reasonable;
  - (ii) the date(s) and time(s) of the entry(s), which must be between 8 a.m. and 9 p.m. unless the tenant(s) otherwise agrees.

When read completely, the section does not require a separate notice of entry be given for every entry; one notice may be given for multiple entries over the next thirty days, as long as the purpose for the entry is reasonable. For example, if a landlord is having repairs made to the rental unit that will extend over several days the landlord may give one notice that says that says something like workmen will be attending at the rental unit between 8:00 am and 4:00 pm, Monday to Friday, for the next week for the purpose of renovating the bathroom.

The section refers to entry; not person, party or group. Again, if a landlord arranges to have several different tradesmen come to the rental unit to make repairs during the same time period, and give one written notice of entry that states that the purpose for the entry is to make repairs, that is sufficient. The landlord is not required to give separate notices of entry for each tradesperson.

Of course, any notice that provides a schedule of showings must be reasonable.

When I first read the material filed by the parties and heard their examinations-in-chief I was leaning towards the view that the tenants' actions were seriously impeding the landlord's rightful effort to sell his property. One of the factors that weighed in this consideration was that the landlord is not a big company, but an individual.

However, the evidence I heard in the landlord's rebuttal evidence, much of which had not been mentioned previously, suggested to me that the tenants' behaviour may not be the only reason why this property has not sold.

The history of this listing is that:

- The price was dropped within a month of the property being listed.
- The realtor was changed within six weeks of the initial listing.
- There was an interruption of showings while the home was re-listed with the new realtor.

The most significant fact is that in spite of everything the landlord has received a half-dozen offers for the property. Those sales have not been completed for reasons completely unrelated to the tenants.

I find that although the tenants were misguided when they denied access to the rental unit by prospective purchasers their behaviour did not interfere with a lawful right of the landlord to the extent necessary to end this tenancy. If the landlord had not received any offers during this time, I would probably have come to a different conclusion. Accordingly, I grant the tenants' application. The 1 Month Notice to End Tenancy for Cause dated August 4, 2016, is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.

In order to ensure that access to the rental unit does not become an issue in the future I order that the property may be shown to prospective purchasers, without 24 hours written notice having been given in advance between 12:00 am and 3:00 pm,



Wednesday and Saturday; and at any other time upon proper written notice having been given.

Based upon the evidence presented and the tenant's testimony that the lock box is no longer an issue, the request for an order allowing the tenants to change the locks is dismissed.

On their application for dispute resolution the tenants had claimed a monetary order in the amount of \$300.00. However, no particulars of this claim were provided and no evidence in support of such a claim was given. Accordingly, it is dismissed.

As the tenants were partially successful on this application they are entitled to reimbursement from the landlord of the fee they paid to file it. Pursuant to section 72(2) the sum of \$100.00 may be deducted from the next rent payment due to the landlord.

#### Conclusion

- a. For the reasons set out above the 1 Month Notice to End Tenancy for Cause dated August 4, 2016, is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.
- b. An access order has been made.
- c. An order regarding the filing fee paid by the tenants has been made.

*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: October 20, 2016

---

Residential Tenancy Branch

