



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Delaney Properties  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause.

The tenants both attended the hearing with an advocate and one of the tenants gave affirmed testimony. The tenants had a witness to testify, however the witness did not remain available and did not testify. The landlord individual also attended the hearing and gave affirmed testimony, and represented the landlord company. The parties were given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

### 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* and specifically with respect to the reason for issuing it?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on June 1, 2015 and the tenants still reside in the rental unit. Rent in the amount of \$700.00 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 landlords collected a security deposit from the tenants in the amount of \$350.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is one of 12 units within the complex all managed by the landlord, and the landlord does not reside there. A copy of the tenancy agreement has not been provided by either party.

The landlord further testified that on August 31, 2016 the tenants were served with a 1 Month Notice to End Tenancy for Cause by either personally handing it to one of the tenants or taping it to the door of the rental unit. The landlord does not recall but testified that those are the methods available to him. A copy of the notice has been provided and it is dated August 31, 2016 and contains an effective date of vacancy of September 30, 2016. The reason for issuing it states: "Tenant has engaged in illegal activity that has, or is likely to: adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord."

Of the 12 units in the rental complex, 3 were "crack" units over the summer of 2016, and 2 of those have since vacated their respective rental units. The landlord testified that the tenants were doing fine for about a year and then got into crack. A girl who is under a Court order to stay away from a tenant in the complex has moved in with these tenants. The landlord has received numerous complaints about the tenants from every other unit, and read some during his testimony. They involve complaints of lots of people all night, fights, people moving in, "crack" people coming out of all 3 units, selling drugs, known addicts present in the rental complex, police presence, people jumping the fence and the person who is under a Court order to stay away is selling drugs from the rental unit. There are also lots of police files, and police have removed 2 people. Other people scurried pretty quick when the police arrived.

After the notice was issued, the tenants had cleaned up their act, and believing there would be no future problems, the landlord was prepared to cancel the notice and has therefore not provided any evidence for this hearing. However, the last 10 days or so have been problematic again, and the landlords seek an Order of Possession.

**The tenant** testified that police have not been called about this tenancy, and the landlord has not given the tenants any notices in writing about illegal activity or additional occupants, but the landlord did speak to the tenant about 10 months ago wherein the landlord mentioned drugs.

There have been no noise complaints or other complaints that the tenant is aware of from other tenants in the rental complex.

No additional occupants presently reside with the tenants, but another person did reside there and the tenants paid the landlord an additional \$50.00 per month for that period. The person that the landlord referred to as having a Court order to stay away has been there, but has not stayed overnight.

### **Closing Submissions of the Tenants' Advocate**

The tenants' Advocate submits that the landlord has not provided any evidence of illegal activity or any written notices or warnings about noise complaints or illegal activity. The landlord takes issue with the visitors of the tenants, but the landlords accepted an additional \$50.00 per month for an additional occupant. The landlord testified about a Court order, but the tenants were not given any notice that the person was not permitted on the property, nor have the landlords provided a copy of the Court order. Police were called about several units, not specific to these tenants, and the tenants dispute any illegal activity.

### **Closing Submissions of the Landlord**

The landlord submits that the tenants' Advocate is painting a picture that the tenants are not conducting any illegal activity, however shots were fired from that rental unit, and the landlord is trying to make the complex safe and nice for other people.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the 1 Month Notice to End Tenancy for Cause 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.

The landlord testified that illegal activity has been and is again going on in the rental unit, being the illicit sale of drugs, and read in numerous complaints by other tenants in the rental complex. He also testified that police have attended 3 of the rental units in the complex, including this rental unit which is disputed by the tenants.

The tenants' advocate submits that since the landlords have not provided any written warnings or notices to the tenant, the notice to end the tenancy should be cancelled. I agree that generally a breach of a material term of a tenancy agreement should be dealt with by a written notice by a landlord and giving a tenant time to correct such a breach, but I do not agree that written notice of the illicit sale of drugs is necessarily required.

The only evidence of the landlords that is before me is the testimony. The landlord testified that he was prepared to agree to cancel the notice and therefore declined to provide any evidence for this hearing, but the tenancy is again problematic and there is illicit sale of drugs from the rental unit. The landlord did not testify as to how he knows that, other than complaints received from other tenants in the rental complex, but no evidence of what those tenants have actually observed, or the result of any police involvement or investigation.

The *Residential Tenancy Act* specifies in what circumstances a landlord may issue a notice to end the tenancy for cause, and I am not satisfied, given the testimony of the parties, that the landlords have established the illegal activity.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated August 31, 2016 is hereby cancelled and the tenancy continues.

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 02, 2016

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Residential Tenancy Branch