



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

CNC; LAT

### **Introduction**

This is the Tenants' Application for Dispute Resolution seeking to cancel a Notice to End Tenancy for Cause issued September 18, 2016 (the "Notice"); and an Order allowing the Tenants to change the locks to the rental unit.

Both parties signed into the Hearing and gave affirmed testimony. The Hearing process was explained and the parties were asked if they had any questions.

The Tenants served the Landlords with their Notice of Hearing documents by mailing the documents, via registered mail, to the Landlords. The Tenants were not certain of the date that the documents were mailed, but the Landlords acknowledged receipt of the documents on or about September 20, 2016.

The Tenants acknowledged receipt of the Landlords' documentary evidence "last Wednesday".

### **Issue(s) to be Decided**

- Should the Notice be cancelled?
- Are the Tenants entitled to an Order authorizing them to change the locks to the rental unit?

### **Background and Evidence**

The Tenants moved into the rental unit on April 1, 2015. Rent at the beginning of the tenancy was \$700.00. Current rent is \$720.00 and is due on the first day of each month.

On September 18, 2016, the Landlords served the Tenants with the Notice to end the tenancy. The Tenants acknowledged receiving the Notice on September 18, 2016, taped to their door.

The Landlords gave the following testimony and submissions:

The Landlords testified that they wish to end the tenancy for the following reasons:

1. The Tenants are repeatedly late paying their rent. One half of the rent, \$360.00, is paid by the Public Guardian and Trustee on behalf of the Tenant DW. The remaining half of the rent is paid by the Tenant LW. The Landlords testified that rent has been paid late for the following months: June, 2015; July, 2015; August, 2015; September, 2015; November, 2015; June, 2016; July, 2016; and August, 2016. The Landlords provided a copy of their banking information in evidence along with two warning letters with respect to late payment of rent.
2. The Tenants do not maintain reasonable health, cleanliness and sanitary standards throughout the rental unit. On or about September 9, 2016, the Landlords received a complaint from the Tenants' neighbour about a pungent smell in the common area outside the Tenants' suite. The Landlords went to the rental property and investigated the smell. They stated that the smell was awful and that it appeared to be coming from inside the Tenants' apartment. The Landlords posted a note on the Tenants' door advising that they would be back at 9:45 a.m. the following morning to inspect the Tenants' apartment. The door of the apartment was open and the apartment floor was still wet from being cleaned. The Tenant LW told the Landlord that the smell must have come from the business downstairs.
3. The Tenants are noisy, which disturbs the neighbouring tenant. They play their TV loudly; use the washing machine and dryer early in the morning or late at night which disturbs their neighbour's sleep; and slam doors while coming in and going out of their apartment and building. The Landlords are concerned that the neighbouring tenant may end her tenancy because of the noise. The Landlords provided a copy of a letter of complaint from the neighbouring tenant.
4. The Tenants abuse the blinds in the rental unit and the washer and dryer in the common area.

The Tenants and their advocate gave the following testimony and submissions:

The Tenant LW denied being late with rent, except for on long weekends. She stated that the Landlord allowed her to pay rent late on several occasions. LW stated that she paid cash directly into the Landlords' bank account and that sometimes she was unable to get to the bank, which is in another town, on the first day of each month. She testified that sometimes the bank was closed on the first day of each month.

The Tenants' advocate submitted that the Landlords' banking information did not give sufficient evidence that it was the Tenants' payments that were late or if the deposits were from another tenant. She submitted that the Landlords did not give the Tenants receipts for rent payments, which would indicate when the Tenants' rent was paid.

The Tenant LW stated that the smell referred to by the Landlords was coming from under the fridge. She stated that there were mushrooms growing from condensation in a tray under the fridge and that she cleaned it up.

The Tenant DW stated that he was discriminated against by the Landlords and the neighbouring tenant. He said he could not even go inside or outside of the building without someone complaining he was being too noisy.

The Tenants stated that they were discriminated against by the Landlords. They objected to being called "natives", which they stated happened during the Hearing.

The Tenants' advocate submitted that the Tenants were not given sufficient time to reply to the Landlords' submissions and that the Tenants were interrupted frequently by the Landlords and by me while they were testifying.

I provided the Tenants and the Tenants' advocate more time to give me their submissions.

## **Analysis**

It is important to note that this was a very difficult Hearing. Towards the end of the Hearing, both parties were interrupting each other, and me, and shouting at each other. I had to "mute" the parties while I was speaking. This meant that the parties could hear me, but I could not hear them. It is also important to note that I did not hear the Landlords referring to the Tenants as "natives" during the Hearing. If I had, I would have interrupted the Landlords' submissions immediately. Rudeness, name-calling, and disrespect are not acceptable or permitted during Hearings.

When a tenant seeks to cancel a notice to end the tenancy, the onus is on the landlord to provide sufficient evidence, on the balance of probabilities, that the tenancy should end for the reason(s) provided on the notice.

On the Notice, the Landlords provided the following reasons for ending the tenancy:

- Tenant is repeatedly late paying rent.
- Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
- Tenant has engaged in illegal activity that has, or is likely to adversely affect the quite enjoyment, security, safety or physical well-being of another occupant.

I find that the Landlords did not provide sufficient evidence to support the last two reasons to end the tenancy. The Landlords did not check any of the boxes on the Notice in support of the second reason to end the tenancy. The Landlords provided no evidence that the Tenants were engaged in illegal activity.

However, with respect to the first reason, I find that the Landlords provided sufficient evidence to end the tenancy. Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number sufficient to justify a notice under Section 47 of the Act.

A landlord must provide receipts for rent paid in cash; however, in this case the Tenant LW deposited monies directly into the Landlord's account. I find it probable that the deposits shown on the Landlords' banking statement were made by the Tenant LW. The Landlords have two other tenants in the rental property: one is a commercial tenant and the other is a residential tenant. In the Tenants' case,  $\frac{1}{2}$  of the rent is paid by LW and the other half is paid on behalf of the Tenant DW. The amounts deposited are equal to  $\frac{1}{2}$  of a month's rent. I accept, on the balance of probabilities and based on the Tenant LW's testimony, that the Tenants were late paying rent on at least three occasions. Therefore, I find that the One Month Notice to End Tenancy is valid. I find that the effective date of the Notice was October 31, 2016, and that the Tenants are overholding.

The Tenants' application to cancel the Notice is dismissed.

Section 55(1) of the Act provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if (a) the landlord's notice to end tenancy complies with Section 52 of the Act and (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the notice.

I find that the One Month Notice to End Tenancy complies with Section 52 of the Act and therefore, the Landlords are hereby provided with an Order of Possession.

### **Conclusion**

The Tenants' Application is **dismissed**.

The Landlords are hereby provided with an Order of Possession **effective 2 days after service of the Order upon the Tenants**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 11, 2016

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Residential Tenancy Branch