



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated October 21, 2016
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was served on the Tenants by mailing, by registered mail to where the Tenants reside on October 21, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on November 8, 2016.

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated October 21, 2016?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began on August 1, 2015 when the parties entered into a one year fixed term tenancy agreement that became month to month after the expiry of the year. The present rent is \$1237 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$600 at the start of the tenancy.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord
- Tenant has engaged in illegal activity that has, or is likely to:
  - ...
  - jeopardize a lawful right or interest of another occupant or the landlord

The landlord seeks to end the tenancy based on the following evidence:

- The rental property includes a house and outbuildings. As well there is a trailer that is rented separately. The landlord has received complaints from the tenants living in the trailer that they cannot allow their dogs run freely because the dogs might attack the free range chickens and ducks of the tenants.
- The tenants dismantled a fence that separated the property.
- There is ample space to allow the tenants to operate the free range poultry business in another part of the property.
- Around the middle of September the landlord's were advised by the Tenants that they wanted to operate a babysitting business from the rental property. The tenants advertised on a public web sit that she was starting up a day care. The landlord told the tenants they would contact their insurance agent. The insurance agent advised the landlord that the operation of a babysitting business voided their insurance and the insurance was terminated.
- There have been problems dealing with the tenants. The tenants are ignoring the reasonable requests of the landlord.
- The landlord testified they wished to upgrade the property so that it can be sold.

The tenant gave the following evidence:

- Prior to renting the rental unit the previous renters had free range poultry on the property.
- The addendum to the tenancy agreement provided the tenants could have a "reasonable amount of livestock" and the tenants were responsible for "any pet damage."
- The tenant disputes the testimony of the landlord dealing with the insurance. He testified it is unusual for an insurance company to terminate a policy because you have asked a question about a possible change. He suggests that perhaps the

reason for the termination was because the landlord's hand farm insurance and failed to advised the insurer that it was rented out. Further, he testified that his insurer would have been prepared to issue an additional policy to the tenant's that would permit a home based business such as babysitting.

- One they received the response of the landlord and prior to the receive the of one month Notice to End Tenancy the tenants stopped her babysitting business and no longer pursued the idea of a day care.
- The tenant who used to live in the trailer on the adjoining property was seldom home. After the expiry her lease she moved to live with the landlord's son. She never advised the tenants of a problem with the free range poultry. The reason she gave for moving was that she was seldom there and the high cost of heating the trailer.
- The present tenant of the trailer is seldom present. She was there for a few days in late August but returned to Calgary. She was present for 3 hours in late September and at the end of November. She has expressed a concern about wanting to building a fence around the trailer to ensure her deaf dog does not wander off. When she is present and asked the tenants have moved their poultry to a different area of the property and it has not been a problem.

#### Analysis:

After carefully considering all of the evidence I determined the landlords failed to establish sufficient cause to end the tenancy for the following reasons:

- The landlords failed to present sufficient evidence to establish that the tenants have significantly interfered with or unreasonably disturbed the landlord or another occupant of the rental property. There is insufficient evidence that the presence of the free range poultry has significantly interfered with or unreasonably disturbed the renters of the trailer. They are seldom present. Whenever they have been present they have worked with the tenants and there does not appear to be problems between the tenants and the tenant of the trailer. The tenants of the trailer did not testify at the hearing. .
- I determined the landlord failed to establish sufficient cause on the basis that the tenant's have engaged in an illegal activity that has or is likely to jeopardize a lawful right or interest of another occupant or the landlord. The landlord failed to prove the cancellation on their insurance was caused because of the babysitting. In any event the tenants had stopped the babysitting by the time the landlord served the one month Notice to End Tenancy. There is insufficient evidence to establish that the tenants have engaged in an illegal activity.

#### Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. As a result I ordered that the one month Notice to End Tenancy dated October 21, 2016 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. As the tenants have been successful I ordered that the landlords reimburse to the tenants the cost of the filing fee in the sum of \$100 such sum may be deducted from further rent.

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: December 22, 2016

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Residential Tenancy Branch