



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Dafada Investment Canada and Fraser Property Management and Green  
Team Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### 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 and to recover the filing fee from the landlords for the cost of the application.

Both tenants and an agent for the landlord companies attended the hearing and each gave affirmed testimony. 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.

### Issue(s) to be Decided

Have the landlords established that the 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The landlord's agent** testified that this fixed term tenancy began on March 21, 2016 and expires on March 31, 2017 at which time the tenants are required to vacate the rental unit. Rent in the amount of \$950.00 per month is payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$475.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 6 residential units and 7 commercial units. A copy of the tenancy agreement has not been provided.

The landlord's agent further testified that another agent of the landlord personally served one of the tenants with a 1 Month Notice to End Tenancy for Cause, a copy of which has been provided by the tenants. It is not entirely readable, however the

landlord's agent testified that it is dated November 22, 2016 and contains an effective date of vacancy of December 31, 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.

The landlord's agent testified that there is too much traffic quite frequently going in and out of the rental unit. The landlord's agent spoke to the previous property manager who said that he saw abnormal activity but didn't have proof. Perhaps the tenants are selling things without a license.

The landlord's agent further testified that she spoke with police about it but they didn't do anything.

The landlord only wants peace for the building.

**The first tenant** (SW) testified that the landlord has not given any verbal or written warnings about too much traffic. There is absolutely no illegal activity going on in the rental unit and denies that there have been a lot of people coming in or going out of the rental unit. The building is a non-smoking building so the tenant and her guests go outside to smoke.

When asked why the tenant didn't answer the door when the landlord's agent attended the rental unit, the tenant testified that she didn't hear anyone knock. However, the tenant spoke to the landlord's agent at a later time about providing post-dated cheques for rent.

**The second tenant** (SB) testified that she contacted the landlord's agent around the 23<sup>rd</sup> or 24<sup>th</sup> of November, 2016 about post-dated cheques for rent. At that time the landlord's agent told the tenant that she didn't like the looks of people going in and out of the rental unit and told the tenant that she sat in her car watching. The tenant wonders how the landlord's agent knows which suite people were going to if the landlord's agent was sitting in her car.

The tenant further testified that there is no illegal activity going on in the rental unit, and the tenants seek an order cancelling the notice to end the tenancy.

### 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 given in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it.

In this case, the reason for issuing it is that the tenants have engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant. There is absolutely no evidence before me that any illegal activity is taking place or has taken place in the rental unit, and the landlord's agent isn't even sure. There is an assumption by the landlord's agent, but it is denied by both of the tenants. In the circumstances, I am not satisfied that the notice was given in accordance with the *Act*, and I cancel it.

Since the tenants have been successful with the application, the tenants are entitled to recovery off the \$100.00 filing fee, and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

### Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated November 22, 2016 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

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: January 05, 2017

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Residential Tenancy Branch