



# 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, OLC, FF

### Introduction

This hearing convened as a result of Tenants' Application for Dispute Resolution wherein the Tenants sought to cancel a 1 Month Notice to End Tenancy for Cause issued on December 30, 2016 (the "Notice"), an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement, and to recover the filing fee.

The hearing was conducted by teleconference on February 1, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Should the Notice be cancelled?
2. Are the Tenants' entitled to an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation* or the residential tenancy agreement?
3. Should the Tenants recover the filing fee?

### Background and Evidence

S.M. testified on behalf of the Landlords. He confirmed that the property is 100 acres. He stated there are two homes on the property, one is occupied by the Landlords; the other home has two units, the upper unit is occupied by D.P. and P.S. and is the rental unit subject to these proceedings.

S.M. stated that the amount of land over which the Tenants have access is approximately 7-8 acres. Pursuant to the Addendum the Tenants also have access to farm buildings. For greater clarity the Addendum is reproduced as follows:

1. It is agreed that if the tenant moves out and fails to pay rent or give proper notice they will forfeit their damage deposit to the owner; and
2. The tenant agrees to allow the Landlord/Owner into the suite every 6/8 weeks for inspections with 24 hours notice.
3. Rent includes main floor of home, large lawn, side fenced field with large brown barn, dog/chicken house/coop with that fenced field
4. tenants are responsible for all household bills split appropriately with bsmt unit, and their own yard maintenance.
5. Tenants are also responsible for any damages to property caused by their animals.
6. The tenant agrees there will be NO smoking in the suite;
7. Tenant agrees to not Grow Marijuana at stated address.
8. No access into the alfalfa fields.

S.M. stated that the Tenants have not been farming the land. S.M. further testified that he asked the Tenants for confirmation of the number of animals they have on the property and the Tenants have refused to provide this information. S.M. stated that he estimates that the Tenants have approximately 100 chickens, 20 dogs, goats and sheep.

The Tenancy Agreement does not limit the number of animals the Tenants are permitted to keep.

S.M. stated that the Notice was issued as a result of the condition in which the rental unit is kept, and in particular the Landlord's concerns over the Tenants' farming practices. The reasons cited on the Notice are as follows:

The Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

S.M. stated that he has managed the property for approximately three years. He stated that the Owners moved into the heritage home on the other end of the property in July of 2016 and it was at that time the Owners began to notice the condition of the rental property. He further stated that the Landlord received complaints from the neighbours. S.M. further stated that the downstairs renter, R.M., also expressed concerns about a mouse infestation in September 2016, which he attributed to the upstairs renters' farming practices.

R.M. inspected the property on December 16, 2016 and provided photos in evidence.

S.M. stated that he inspected the rental unit on December 16, 2016. He stated that the rental unit was

- 20 daschund dogs crammed into 6 cages;
- Big trays of dog food
- Piles of nesting material outside
- Food particles outside on the deck
- Big pile of rubble in the yard
- Recycling material that would cover a 4x6 space square and three feet high

S.M. stated that he brought in an exterminator on December 1, 2016. The exterminator brought to S.M.'s attention that the food and nesting materials was attracting mice.

S.M. stated that the Tenants insisted that the Owners should pay for the extermination costs. S.M. stated that it was the Owners' position that the Tenants caused the infestation and should therefore pay for the cost.

S.M. testified that the Notice to End Tenancy was posted to the rental unit door on December 30, 2016. S.M. also provided a letter to the Tenants (which appears to be a duplication of the communication he sent to the Landlord) which reads as follows:

The results of my inspection were frustrating for me. When I went into both units I found (have attached pictures) lots of reasons there is a mice infestation in the home. Here are some of the problems I see.

1. To many animals in the home – Multiple food sources left out for animals will attract the mice. There needs to be separation from home and animals.
2. Piles of recycling in both units – The pop bottles have sugar left in them and they attract the mice and when it warms up the bugs.
3. Nesting materials – Lots of nesting areas in the home. Richard showed me how the insulation being used as nesting material. U have sawdust, hay, garbage laying so close to the home that the mice have lots of areas to nest.

In my opinion you the tenants have created the perfect breeding grounds for mice to infest the home would ask that you pay for the exterminator as he has given me some of the above causes for the mice infestation.

**Recommendations –**

Remove the piles of garbage inside and outside the home.

Remove the animals from the home. Limit the inside of the home to one pet each.

Create larger separation from the home with hay, shaving, etc. Keep that stuff located in the barn area. There have been complaints from neighbors about the smell at the place. U need to remove the waste products frequently.

Purchase a tractor to help you with these tasks.

Install a yard hydrant for watering

Put heat into shop to remove animals from home.

S.M. testified that the Tenants applied for dispute resolution and as he was out of the country, he had the property owner, J.B., and another property manager attend the rental unit to do another inspection on January 22, 2017. At this time, S.M. was not in attendance.

S.M. stated that the Tenants' farming practices are "wrecking the place".

He further stated that the "significant risk" posed by the Tenants is that the Tenants' farming practices are resulting in large scale mouse infestation. He claimed the mice are chewing on wires.

S.M. also stated that the Tenants leave the rental unit and farm unattended while they travel. In support he provided photos from the Tenants' social media.

The property owner, J.B. also testified. She confirmed that she participated in the January 22, 2017 inspection with the other property manager, S.M. She stated that she had not been in the rental unit for some time and she was very upset by what she saw. She said it was disheartening to see. She described the outside as "gone downhill". She stated it used to be a beautiful lush pasture. She stated that it is loaded

with makeshift cages, and tarps and tents. She stated that the smell was overpowering from the ammonia from the chicken manure and the rotting hay.

J.B. stated that she was aware the Tenants were going to have some chickens and dogs, but it was her expectation that it would be in the barn outside. J.B. stated that she saw approximately 2 dogs inside the residence, and multiple dogs outside. J.B. also stated that there was an incubator in one of the bedrooms, where the Tenants were incubating chickens.

J.B. testified that she did not see any signs of mouse infestation in the rental unit, and confirmed that the rental unit was clean at the time.

D.P. testified on behalf of the Tenants. D.P. stated that the Tenants do not believe they have put the property at significant risk as alleged by the Landlord. He stated that he has "beautified the property" including putting in flower gardens.

D.P. further stated that when they first discussed renting the property with S.M. there was a considerable amount of back and forth regarding what was permitted in terms of farming. D.P. confirmed that they rented the rental unit specifically so that they would be able to breed small dogs and heritage show chickens as well as to farm the land.

D.P. testified that the municipal bylaw enforcement officer was called by someone and that the bylaw officer told the Tenants that the chickens were too close to the road. D.P. stated that the Tenants were given seven days to address this concern and they did as requested. He also stated that the bylaw enforcement officer then returned to the property and confirmed that the chickens had been moved as requested and that their farming practices were acceptable.

D.P. also testified that "someone" also called the SPCA. He confirmed that a representative from the SPCA attended the property and said that all the animals, including the dog kennel operation, were fine and the Tenants were in compliance.

D.P. submitted that there was no restriction on the number of animals permitted at the rental property and that in any case the number of animals they have is not excessive. He further stated that he informed the Landlord he intended to raise heritage show chickens at the time he agreed to rent the property. He confirmed that incubating chickens inside the property is standard practice in colder climates and is done in a manner which does not put the property at risk. He stated that he was told that he could use the "property" for his farming practices and he was not told that he could not hatch

chickens within the home, or that all of his farming had to be outside. He denied that incubating chickens was causing any damage to the property.

D.P. confirmed that they have 20 heritage show birds/chickens outside that are approximately 6 months to a year. D.P. further stated that they have an incubator with approximately 100 eggs inside the house which are set to hatch shortly and will be sold within a few days of hatching.

D.P. further stated that he has “farmed that land” in that he has vegetable and flower gardens.

D.P. further stated that the upstairs rental unit does not have a mouse problem as alleged by the Landlord. D.P. confirmed they have a cat to control the mice as they are farmers and aware the grain can attract mice. He stated that he was aware the downstairs renters had a mice problem as on one occasion he went downstairs to check on the breaker box and could see the dead mice.

D.P. confirmed that he breeds small dachshund dogs on the farm and that they currently have 13 dogs. He stated that two dogs are in the house full time, and he brings the others in when he has people coming to look at the puppies, which he says was the case when the exterminator was there. He further stated that in December he had an issue with the power, as such the outside area was too cold for the dogs to be outside. He stated that he had the dogs in the kitchen in their kennels at that time but that generally the dogs are in the barn. In any case, he stated that he keeps the rental unit very clean and that in no way are the dogs putting the property at risk.

D.P. stated that when the property was inspected by the Landlord and the Property Manager, M.B., on January 22, 2017, M.B. said “my you have really cleaned up since the last inspection”. D.P. found this to be offensive as he says that he always keeps his home clean, but that in any case, this comment confirmed that the rental unit was clean and not at any risk.

In response to the Landlord’s claim that they do not deal with animal waste appropriately, D.P. further stated that he does “deep bedding” in the winter. He further stated that the sawdust and manure are stored approximately 100 meters away from the rental home.

In response to the Landlord’s claim that they leave the farm unattended, D.P. stated that three times he went away and each time he paid someone to look after the animals. He

also stated that he was away for six days over Christmas and he paid someone \$50.00 per day to look after the animals.

### Analysis

Ending a tenancy is a significant matter. When a Landlord seeks to end a tenancy for cause, the Landlord bears the burden of proving that the Notice should be upheld for the reasons cited in the Notice. In the case before me the Landlord must prove on a balance of probabilities that the Tenants or a person permitted on the property by the tenants have put the landlord's property at *significant risk*.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I find, based on the evidence before me and on a balance of probabilities, that the Landlord has failed to prove that the Tenants' farming practices have put the property at significant risk as alleged by the Landlord.

I accept the Tenants' evidence that they had extensive discussions with the Landlord as to their intention to farm the land and raise animals. The Tenancy Agreement does not restrict the number or type of animals the Tenants raise.

I further accept the Tenants' evidence that the SPCA and the municipal bylaw enforcement officer have inspected the Tenants' farming practices and concluded that they are in compliance.

While the Tenants' chicken "operation" may be unsightly, and smelly, the question is, does it put the Landlord's property at *significant risk*? Based on the evidence before me, I am unable to come to that conclusion.

The Tenants submitted that incubating chicks indoors is standard practice. The Landlord failed to submit any evidence to contradict this claim, or to support a finding that incubating chicks indoors puts the property at significant risk.

The Landlord alleges the Tenant's farming practices have caused a mouse infestation which in turn has put the property at significant risk.

The evidence filed by the Landlord suggests that the downstairs tenant, R.M., informed the Landlord's property manager S.M. about the mice in September of 2016 and requested that the Landlord send an exterminator. In response, S.M., wrote:

"Do you have mice droppings in the unit? Can u go to Cdn Tire to get mouse posoin. Put it behind the fridge. We are not sending an exterminator to a farm to kill mice. Hearing them in the wall, they must come out somewhere."

[Reproduced as Written]

R.M.'s response indicates he was aware of the potential of mice in a home adjacent to a farm. It also indicates he did not believe this problem to warrant the services of an exterminator.

Also introduced in evidence was an email dated January 19, 2017 from B.W., the person hired to address the mouse infestation. Notably, this email indicates the service occurred on December 3, 2016, approximately three months after the downstairs mouse problem was brought to R.M.'s attention; as such, I find it likely that the Landlord's delay in sending an exterminator contributed to the mouse problem in the downstairs unit.

The property owner conceded that she did not see any evidence of mouse activity in the subject rental unit when she attended the property for the second inspection on January 22, 2017. The Tenants testified that they have a cat and as a result do not have mice in their unit. Consequently, although it may be the case the downstairs rental unit has mice, I am unable to find that a mouse infestation exists in the subject rental unit as alleged by the Landlord.

The Tenant testified that the property manager who accompanied the property owner on the second inspection remarked that the rental unit was very clean.

The parties also agreed that the shared garbage and recycling area had been cleaned as of the date of the second inspection. Accordingly, even in the event the Landlord could prove the garbage and recycling area contributed to the downstairs mice problem, it appears to have been rectified by the time the second inspection occurred.

I accept the Tenants' evidence that they keep two small dachshund dogs in the rental home and house the remaining 11 in the barn. I further accept their evidence that when they show the dogs for sale, they bring them in the house, which is not a regular occurrence. I find the Landlord has submitted insufficient evidence to support a finding that this practice puts the property at significant risk.



In all the circumstances, I find the Landlord has failed to prove the reasons cited in the Notice, and I therefore grant the Tenants' request to cancel the Notice.

Conclusion

The Notice is cancelled. The tenancy shall continue until ended in accordance with the *Act*. Pursuant to section 72 of the *Residential Tenancy Act*, I authorize the Tenants to reduce their next month's rent by \$100.00 as compensation for the cost of the filing fee.

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: February 9, 2017

---

Residential Tenancy Branch