



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes:

ERP, OLC, RP, MNDC, CNC, OPC, FF

Introduction

This reconvened hearing was scheduled in response to the tenant's Application for Dispute Resolution made on September 20, 2017, in which the tenants have requested emergency repairs, that the landlord be ordered to complete repairs and comply with the Act, compensation for damage or loss under the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

An initial hearing was held on December 5, 2017 at which time the tenant's request for emergency repairs was heard. An interim decision was issued on December 11, 2017.

The December 5, 2017 hearing adjourned to January 16, 2017 at which time the balance of the tenant's application was considered.

The landlord's application requesting an order of possession was joined, to be heard at the same time as the tenants' application (see cover for file number.)

At the adjourned hearing the parties were reminded they continued to provide affirmed testimony. The landlord's witness was affirmed.

Preliminary Matters

The interim decision indicated that no further written submissions would be considered. On December 29, 2017 the landlord submitted additional written submissions. The tenants objected to that evidence as they believed any written rebuttal would be rejected. In accordance with the instructions given regarding additional written submissions the additional evidence submitted by the landlord was set aside. The landlord was at liberty to make oral submissions in relation to that evidence and referred to that evidence throughout the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession based on a one month Notice to end tenancy for cause or should the Notice be cancelled?

Are the tenants entitled to compensation for damage or loss under the Act for the loss of property and quiet enjoyment?

Background and Evidence

The following contains a summary of the evidence presented by the parties. This summary is not a complete record of all the evidence. I have focused on the aspects of the evidence that I have determined were most relevant to the issues in dispute.

One Month Notice to End Tenancy for Cause:

The landlord issued a one month Notice to end tenancy for cause on November 14, 2017. The tenants disputed that Notice six days later. The Notice provided the following reasons for ending the tenancy:

The tenant or a person permitted on the property by the tenant has:

- *Significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *Put the landlord's property at significant risk; and*

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

During the hearing the landlord was asked to focus on events leading up to the date the Notice ending tenancy was issued; not on events that are alleged to have occurred since November 14, 2017, the date the Notice was issued.

The landlord stated that up until September 11, 2017 the tenancy had progressed well. The landlord submits that the tenancy must now end as the tenants' are interfering with the landlords' ability to keep the property safe and they are failing to comply with the terms of the tenancy. The landlord submits that the tenants have been aggressive and non-compliant. The landlord states that the property cannot be maintained properly with the tenants present.

The landlord considers any space in the basement, with the exception of the laundry room and office, and storage, as common area. The landlord stores cleaning supplies in a "mud room" that the tenants must pass through to access their office in the basement.

On October 21, 2017 the landlord issued a written warning to the tenants. A copy of the letter was supplied as evidence. The letter set out the reasons upon which the end of tenancy could be based. The landlord wrote that the only way mice could enter the home is through an open door or window and that the tenants would be responsible for repair of damage caused by rodents. The letter set out behavior that must cease:

- Harassing the landlord and her worker, feeding the rodent population, leaving windows and doors open and ajar and using the basement door and entry area;
- That the tenants must replace the shrubs that had died and to fertilize and water those shrubs;
- Pick up dog droppings daily;
- Use the alarm system;

- Shut off the water main and to water the trees and shrubs.

The landlord said that no other written warnings had been issued to the tenants.

In relation to the breach of a material term, during the hearing the landlord pointed to the following clauses contained in the addendum to the tenancy agreement, which the landlord considers material:

- 4. The tenants are responsible for mowing the lawn and watering the trees and shrubs;*
- 6. The landlord pays for an alarm service, to be used when the tenants are away for 2 days or more;*
- 10. The tenants will shut off the main water supply if they leave the house for more than a day; and*
- 15. The tenants will pick up dog waste from the yard daily.*

(Reproduced as written)

The landlord provided a copy of a water consumption history in order to demonstrate that the tenants have used insufficient water to keep the rhododendrons alive. The landlord said that plants had been planted every 10 feet along the property line, in order to create a shrub fence. The plants are either dying or are in very poor condition but should be at least four feet high.

The landlord submits the tenants have not complied with clause six of the addendum. The landlord obtained a letter from the alarm service as proof the tenants could not have been using the alarm system as the tenants had not requested a passcode. The landlord's insurance company requires the alarm system to be used.

In August 2017 the landlord was in the home to make repairs while the tenants were away. The landlord discovered the tenants had not turned the water main off, as required. The landlord did not issue any warning at that time.

The tenants are to clean dog waste from the yard on a daily basis. The landlord said that this has improved recently, but in the past it was apparent that the tenants were not cleaning up after the dog on a daily basis. The landlord said that dog waste can attract rats.

In relation to significant interference and unreasonable disturbance the landlord said that when attempting to enter the property on October 3, 2017 the tenants told the landlord the entry was illegal. Further, the landlord said proper notice of entry was given for November 3, 2017, but the tenants told the landlord entry was not legal as the landlord was planning on moving the laundry service upstairs.

The landlord submits that from September to November 2017 the tenants have sent "a barrage of angry communications" to the landlord; with the tenants suggesting the landlord should stay away from the property.

The landlord referenced a letter issued by the tenants on October 3, 2017 in which the tenants set out a number of concerns such as: the landlord's worker acting in a manner the tenants feels was aggressive; the worker turning away young children who had come to the house to be looked after by the tenant; the landlord having entered the property on that date without proper notice; that the landlord had spread rat feces throughout the carport; that rat traps and crates

were left in the pathway to the house; that traps had been placed in areas that are inaccessible to rodents; that the tenants could still hear rats in the home; and that the basement was still littered with feces. The landlord felt this letter supports interference and unreasonable disturbance.

The landlord said that on October 3, 2017 some young children came on the property. The landlord and her worker were present and had seen the female tenant leave. When the children asked if someone was home and the worker replied no; that the tenant had left. The children then left the property. Later the tenant telephoned and yelled at the landlord; upset that the landlord had sent the children away. The landlord hung up on the tenant.

On October 5, 2017 the landlord's worker was cleaning the gutters and the female tenant approached the worker, demanding to know the worker's name, saying the worker was not allowed on the property. The tenant called the police, who arrived and took personal information from the worker. Nothing came of this but the worker felt threatened. The police told the parties that this was not a criminal matter, but a tenancy conflict. The landlord said that the conflict has increased to the point where the tenants must go; the landlord and the worker do not feel safe on the property.

When the landlord entered the basement on November 10, 2017 the female tenant pointed a camera at the landlord. The landlord said she was "ambushed." The landlord went outside at which point the tenant locked the door. The landlords' keys were left in the basement storage area. The landlord said she could not enter the basement to retrieve the keys. The landlord confirmed that she did not knock on the main door to the home; the landlord entered the home through the tenant's unit, went to the basement and retrieved the keys. The tenants called the police, who attended at the rental property. The landlord stated the police told the parties they should follow the tenancy rules for access.

The landlord stated that her health is jeopardized as maintenance cannot be completed at the property. The stress could affect a pre-existing heart condition. The tenant's want repairs but do not want the landlord on the property. The tenants make incessant demands and have yelled at the landlord on two occasions; over the phone and once when the landlord was there to clean gutters. The tenants also cut off the power when the landlord was using a hedge trimmer.

A significant risk exists and the tenants refuse to cooperate with rodent control. The tenants will not close doors and windows; they do not pick up dog feces and will not put their food into containers. A risk of flooding exists when the tenants are away; they do not shut off the water main and they fail to use the alarm service.

Tenant Response to the Notice Ending Tenancy.

In response to the allegations regarding material terms of the tenancy, the tenants said that they have been watering the shrubs. The months of increased consumption do not reflect watering but is the result of a hose that was inadvertently left on for a period of three days. The tenants submit that the water consumption has been relatively constant, with on-going watering. The tenants allege that when they moved in a number of the shrubs were on the verge of dying or were dead.

The tenants confirmed they had not registered to use the alarm system. Once the landlord issued the October 12, 2017 warning letter the tenants did register.

The tenants did not turn off the water main when they were away in August 2017 as they had a house sitter in the home.

The tenants said they had been picking up dog waste weekly but since the warning they have been picking up the waste on a daily basis.

On September 29, 2017 the tenants sent the landlord a web link to the residential tenancy requirements for entry to rental property. The tenants also listed the requirements for entry. The landlord responded on the same day, informing the tenants that the landlord would not be accessing the part of the home the tenants rent, so notice would not be required. The landlord wrote: "I don't need to give notice to enter my part of the house." The tenants said the landlord had not been issuing proper notice of entry.

In relation to the conflict that occurred on October 3, 2017 the tenants state the landlord came to the property unannounced and was working on the house. The female tenant had to leave the property, but the male tenant remained at home. The tenants care for a family member's young children after school. Those young children arrived at the home and when they asked the landlord if anyone was in the house, the worker told the children that no one was home. The children then left and were later found in a local park, highly upset. The tenants admitted being upset with the landlord.

The tenants sent the landlord a letter on October 3, 2017 alleging the landlord was at the property without proper notice. The tenants wrote that the worker had sent the children away and that the children had been intimidated. The tenants wrote that they did not want this person at the property again.

The tenants called the police on October 5, 2017 when the landlord and worker were at the property, without notice. The tenants told the worker he should not be there and the landlord told the tenants to shut up. The tenants felt the worker was aggressive and made the tenants feel uncomfortable, so the police were called and attended at the property.

The tenants agreed that on one occasion in November 2017 they told the landlord a notice of entry was not issued for a good reason. The landlord said that the laundry service would be moved into the kitchen and the tenants could see no reason for this.

The tenants confirmed that on November 10, 2017 a picture was taken of the landlord entering the home. The landlord had not given notice of entry and told the tenants notice to enter was not required. When the door to the basement mud room was locked the landlord then "burst" into the house, walked through, yelling, and went to the basement. The tenants called the police.

The tenants deny cutting the power to the hedge trimmer.

In relation to health risks, the tenants respond that the landlord has been at the rental unit almost daily since September. The landlord tells the tenants that it is her house and that the landlord will do what she wants. If notice is given the tenants try to be away from the home. The tenants do not want to have contact with the landlord.

The tenants need to open windows and only 2 windows have screens.

The tenants submit that the landlord is attempting to make them uncomfortable to the point they will leave. The tenants wish to vacate but have been having problems locating a rental unit. Once the tenants began to make written demands of the landlord, commencing September 11, 2011, the landlord retaliated by issuing the eviction Notice.

Tenant Claim – Compensation for damage and loss of quiet enjoyment:

The tenants have made the following claim:

Organic green lentils	4.99
Gluten free baking flour	13.99
Organic icing sugar	17.69
Gluten free almond flour	7.29
Organic baking cocoa	9.69
Organic sugar	10.99
Organic garbanzo bean flour	9.16
Granola bar mix	11.49
Neck warmer	26.88
Cotton crib mattress	458.08
Storage locker	183.27
Exterminator assessment	131.25
Loss of quiet enjoyment:	
June 2015 – November 2016 (17 mon. X \$300/mon.)	5,100.00
December 2016 – August 2017 (9 mon. X \$600.00/mon.)	5,400.00
September 2017 – December 2017 (4 mon. X \$900.00/mon.)	3,600.00
TOTAL	\$14,984.77

The tenants supplied a detailed chronological outline of the events related to an alleged rodent infestation. The tenancy began on June 1, 2015 and by the end of August 2015 the tenants had caught multiple mice in the basement. The landlord was contacted and agreed to bring over traps. The landlord said weather stripping would be installed under a door; the weather stripping was not installed.

On August 31, 2015 the tenants emailed the landlord setting out concerns regarding the mice and a potential health risk. The tenants explained they did not wish to use the laundry as mice were in the basement and that the space smelled of rodent. The landlord replied, writing, in part:

"I'm sorry I sound like I'm not putting a high enough priority on the mouse situation. I would come over right away but...I can bring over mouse traps tonight."

(Reproduced as written)

During 2016 the tenants continued to trap mice and could hear rodents in the ceiling of the lower level office. By late summer 2016 the landlord delivered rat traps. The traps would not fit on top of the heat vents and would trigger without being able to fully close.

In October 2016 a rat was stunned by a trap in the basement and was removed by the tenants. The tenants left the landlord a message regarding the presence of rats in the rental unit. The landlord offered to board up beneath the deck. The landlord delivered more rat traps but refused to deal with the dead mice and told the tenants this was part of living in the rental unit.

By November 8, 2016 the tenants had caught at least 15 rats and continued to catch mice. When the tenants called the landlord they insisted on a professional service, not the use of poison inside of the home. On one occasion the landlord hung up on the tenants.

On November 18, 2016 the landlord enquired regarding further evidence of rats. The tenants replied that the activity had lessened but that they could still hear activity in the home. The tenants were instructed to remove firewood from the carport and to cut the tall grass in front of the house. By the end of 2016 the underside of the deck was boarded up by the landlord; a repair the tenants say was inadequate to stop rodent access.

In early 2017 the tenants found a desiccated rat in the carport and continued to trap rats outside of the rental unit. In June 2017 the tenants noticed mouse droppings in the dog food dish in the kitchen. Traps were set but the tenants did not catch anything. In July 2017 a nest was found in a stroller stored in the workshop. The tenants called the landlord regarding flickering lights which they suspect was caused by rodent chewing.

In late July 2017 the landlord bought a new stove and removed the rat traps and crates from the property. The wiring in the attic was repaired and when the stove was installed the landlord found mouse droppings. The tenants were not immediately told about mouse feces. On August 22, 2017 the tenants caught a rat on the back deck; it was not dead and the tenants had to kill it.

On September 10, 2017, upon returning from vacation, the tenants found mouse droppings throughout the kitchen cupboards, the stairs to the basement and the laundry room. All of the items claimed for replacement were damaged by rodent chewing. Photos of the items, damaged by rodents, were supplied as evidence, with estimates of replacement cost. The tenants agree they were upset and that they called the landlord and requested compensation. The landlord then told the tenants mouse droppings had been found under the stove in early August. The tenants were told they should expect mice in their cupboards if that want to live in the country. The next day the tenants trapped a mouse in the kitchen cupboards.

On September 11, 2017 the tenants send the landlord registered mail, setting out the issues related to pest control. The tenants wrote that it had been approximately one year since they had last place their concerns in writing and reminded the landlord they had discussed the issue extensively. The tenants set out the same concerns previously expressed to the landlord and explained the presence of rodent feces and the smells continued. The tenants rejected the suggestion they should live with this the problem and pointed out rodents and feces can pose health risks. The tenants requested a professional exterminator to assess and remedy the rodent problem within one week. The tenants provided a web link to the residential tenancy act and section 32 of the Act setting out the obligation to repair.

On September 12, 2017 the tenants emailed the landlord writing that it was obvious rodents had been inside the home for a long time. The landlords' furniture in the basement was chewed and there were rodent droppings throughout the furniture. The smell of urine was obvious. The tenants pointed out that the poison, traps and patch-work along the deck had not stopped the rodents. The tenants explained they had contacted the RTB, an environmental health officer with the health authority and a professional pest control technician. All of the advice provided indicated that the landlord must hire a professional to stop the rodents.

The landlord responded that it appeared the tenants would not be happy living in the country. The landlord wrote that the rodents live outside and that it was possible they entered due to doors being left open. The landlord had told the tenants to remove a bag of bird seed from the stairs and that the tenants should cease feeding the birds. The landlord said the tenants would be smart to place grains in canisters or jars in the cupboards that close tightly. The landlord explained that the pantry door had a large gap under it, so it would not keep rodents out. The landlord wrote that the presence of a mouse did not mean there was an infestation. The landlord advised the tenants to trap the mouse, keep the doors and windows closed or screened and not to leave food out. The landlord had looked for points of entry to the home and the only gap that would accommodate a rat was under the deck. The landlord offered to bring a worker over to trim shrubs away from the home, as they provide access to the building. The landlord listed a number of insects, bears, and cougar, mink that are in the neighbourhood and wrote that insects will also come inside. The landlord said she would cooperate to locate points of egress. The landlord wrote that she had recently been in the basement and had not detected any problem.

The tenants then sent the landlord information on rodent control and cleaning instructions obtained from the health authority.

On September 14, 2017 the tenants found rodent droppings in the dining room; in sewing equipment. When the tenants investigated the floor space above the office furnace room where they found significant amounts of rodent droppings. The tenants cleaned the carport and located more rodent droppings. Rodent droppings were found in the tenant's storage area in the basement. A crib mattress stored in the basement and a wool neck warmer kept in the front closet were chewed. Photos of these items were supplied as evidence. There were rat droppings on the deck staircase, at the back door, around the covered deck and firewood. The lower level was reported to smell like rodents and the rats could be heard at night under the floors, on the ducts and above the rooms, running and chewing. The tenants explained they were very worried, given the viruses rodents can carry. The tenants also expressed gratitude for the action the landlord was planning.

On September 21, 2017 the tenants sent the landlord another request for professional extermination and notified the landlord they would no longer assist with trapping and removal of rodents. The next day the landlord responded that the landlord was handling the problem. The tenants then emailed regarding the smell of something that had died near the water control box in the office, continued sounds of rodent activity during the night and mouse droppings.

On September 23, 2017 the landlord was at the rental unit with a worker. The tenants allege the worker honked at the tenants; the landlord said the worker was using the horn when backing up the vehicle. The landlord removed shrubs and worked on the underside of the deck. Dead rats were removed from the exterior traps and traps were placed in the furnace room and near the hot water tank. Rodent feces were ignored by the landlord. The landlord said she would

return on September 26, 2017 to work in the basement and yard. The landlord informed the tenants that no notice would be given for access to the yard. More traps were set by the landlord on September 26, 2017.

The landlord was at the property on October 3, 4 and 5, 2017. The tenants allege that the worker told the tenants they were mentally ill. The landlord removed a tree from outside the home and removed lumber in the car port, which caused rat droppings to be spread throughout the area. The rat feces were cleaned up by the landlord the next day. More dead rats were removed from traps outside.

The tenants sent a letter dated October 3, 2017 alleging the landlord had not remediated the problem respectfully and was not demonstrating concern for the rights of the tenants. The tenants alleged aggressive behaviour by the worker and explained that a ladder was erected by the bedroom window for an unreasonable period of time. The tenants wrote that feces continued to be present in the basement and that rodents could be heard in the floor space. Another request for a professional exterminator was made.

On October 9, 2017 the landlord checked the traps and left a dead rat in one of the traps. The landlord then sent the October 12, 2017 letter threatening eviction. On October 26, 2017 the tenants wrote, disputing the landlords' allegations regarding breach of the tenancy terms.

On October 21, 2017 the landlord informed the tenants that the rat population outside of the rental had been reduced. The landlord did not accept that there were defects in the home that would allow egress. The landlord wrote that a large amount of branches and shrubs had been removed from near the house and windows; lumber was removed from the carport; six traps were set outside that were checked three times each week; no exterior defects allowed entry and the roadside ditches were to be cut.

On October 30, 2017 the tenants wrote that they had removed most of their belongings from the basement to a rented storage locker. The tenants explained that the failure to deal with rodents had resulted in damage to their property. The tenants wrote that the landlord had failed to take adequate steps to deal with the rodents. The tenants requested compensation for use of the storage locker.

The landlord replied that one mouse did not constitute an infestation. The landlord confirmed receipt of a photo of a dead rodent sent by the tenants and asked for pictures of other mice caught in the last two months. The landlord asserted that an appropriate response had occurred.

The furnace ducts were cleaned on November 2, 2017. The landlord supplied a note from the company indicating that no feces were located in the ducts. The tenants submit the feces were present on the top of the ducting. The landlord wrote that no rodents had been trapped recently. The landlord pointed out a note had been left regarding work planned for the yard, but only as a courtesy as the landlord indicated notice for entry to the yard was not required. The landlord then sent a November 4, 2017 email confirming the basement had been cleaned and disinfected. The tenants were told to clean the laundry area.

The tenants submit the landlord told them entry would occur on November 4, 2017; no proper notice was provided. On November 4 and 5, 2017 the landlord was at the unit without proper notice.

On November 7, 2016 the tenants sent the landlord a letter, via registered mail. The tenants informed the landlord that a rat had been caught in the furnace room and that the sounds of rats in the walls and running along the air vents continued. The tenants reported catching multiple rats in the car port and on the front porch. The furnace room was reported to be covered in mouse droppings and insulation was being used for nesting. The water control box in the office had a significant amount of droppings and nesting material. The tenants requested a professional exterminator to remedy the problem and to clean the unit of droppings. The tenants again quoted section 32 of the Act. The tenants referred the landlord to the residential tenancy branch for more information. Eventually the tenants obtained their own pest control report, which is referenced in the interim decision.

On November 11, 2017 the tenants issued another letter to the landlord setting out the requirement for notice to enter the property. The tenants explained they would not hesitate to call the police if the landlord failed to comply with the notice requirements. The tenants explain that the landlord appeared intent on ignoring their concerns regarding the rodents. The tenants suggest the landlord cease further attempts at remediation until the dispute resolution hearing is held.

Copies of emails and numerous photographs of damaged property, dead rodents in traps, feces in and outside of the rental unit and kitchen drawers and cupboards, on top of the furnace ducts and under the flooring, damaged baking goods, potential points of egress into the house, nesting evidence in the house were supplied as evidence.

Landlord Response:

The landlords' witness was called to testify at the start of the hearing, in respect of the need of the witness to return to work. The witness operates a professional, licenced pest control company.

The witness set out the details of an interim report issued on November 22, 2017 and a final report issued on January 11, 2018, after work was completed at the rental property. The report included confirmation that all exterior repairs to access points had been completed around the perimeter; some openings were sealed with cement. Wood trim, foam and caulking have been used to seal access points. A hole under an overhang and in the carport were sealed and the vegetation has been trimmed to eliminate climbing opportunities.

Rat traps and feeding stations were placed in the basement laundry and storage areas. After 15 days the food was untouched and no new evidence of egress by rodents was found. There was no odor or evidence of rodent urine. The witness said that all exterior work was meticulous. The witness set out preventative measures that could be taken in the future.

The tenants questioned the witness who confirmed that during the final inspection rodent feces could be seen in the basement. The witness confirmed that the space above the furnace was inspected, as a feeding station had been placed in that area. The witness confirmed that nesting material and feces could be seen in the water control box, but the presence of some

cobwebs would indicate the area had not been recently disturbed. The witness stated that the feces was "old."

The landlord stated that in the fall of 2016 she was aware of one rat and that in 2016 there was a single mouse found in the home. The landlord stated that these numbers do not represent an infestation. The landlord explained there was an inexhaustible supply of rodents outside, as the property is surrounded by forest. The landlord denied the tenants had made any complaints between the fall of 2016 and fall of 2017. Further, if there were such significant problems the landlord questions why the tenants would remain in the unit.

The landlord said there was no on-going problem or any negligence. The landlord told the tenants to remove a bag of bird seed and to put their food in containers. The tenants refused to keep doors closed; however, the tenants had indicated they have a right to open doors, so no amount of sealing of holes would solve the problem.

When the landlord received the September 12, 2017 letter the landlord completed an inspection and told the tenants it seemed they would not be happy in the home. Even when rodent feces were located behind the stove the tenants did not change their habits. The landlord said that the damage caused to the mattress and neck warmer could have occurred when the tenants' dog was a puppy or by moths. The landlord believes the tenants "scoured" the house for evidence to support their allegations.

In relation to the loss of quiet enjoyment the landlord states there were not more than two rodents. In 2015 the tenants reported trapping two mice, and a single rat in 2016. There was no other rodent activity with the exception of the exterior of the home. Eventually the traps were removed. The landlord stated there is no recent evidence of rodents in the home and that any rat feces in the ceiling space is from 2016. As the pest control professionals did not find any evidence of activity in the ceiling the landlord rejects the claim that there was an on-going problem.

The landlord was at the property three times per week for a one month period in the fall of 2017. The landlord removed three truckloads of branches and shrubs; to discourage rodents from gaining access by climbing. The landlord looked for access points, had the ducts cleaned and inspected all rooms and found no evidence of rodents. The exterior traps were removed when the landlord began to catch birds in the traps.

The landlord said the tenants' were never satisfied.

Analysis

After considering the relevant evidence I have reached my conclusions, based on the balance of probabilities, as follows.

One Month Notice to End Tenancy for Cause:

When a landlord issues a Notice to end tenancy and that Notice is in dispute the burden of proving the reasons on the Notice falls to the landlord.

I have considered the cause to end the tenancy up to the time the Notice ending tenancy was issued. Events referenced after November 14, 2017 have not been deemed relevant to the reason the Notice to end tenancy was issued. The tenants have come to the hearing prepared to respond to the reasons the Notice was issued, not to allegations for events beyond that time.

Residential Tenancy Branch (RTB) policy references the ability of a landlord to end a tenancy for cause, under section 45 of the Act. RTB policy suggests when ending a tenancy for breach of a material term of the tenancy the standard of proof is high, as it is necessary to establish that there has been a significant interference with the use of the property. A material term is one that is so important that the most trivial breach of the term gives the other party the right to end the agreement.

Policy also suggests that assessment of a material term should focus on the overall importance of the term to the tenancy, not the consequences of the breach. A landlord must inform the tenants of the breach of a material term and provide a deadline by which the problem must be fixed. If the problem is not fixed by the deadline, the tenancy may end if the cause is properly established.

The landlord issued a written letter on October 12, 2017 setting out a potential breach of five material terms of the tenancy included in the addendum. During the hearing the landlord provided testimony in relation to four terms, excluding addendum term nine. The October 12, 2017 letter provided general direction to the tenants in relation to multiple complaints, such as allegations the tenants were denying the landlord the right to enter the rental unit, harassing the worker, leaving doors open, and failing to water shrubs.

I find that the letter issued on October 12, 2017 was a general letter of complaint that failed to provide any specific date by which alleged breaches must cease. Further, based on the evidence before me I find that the terms selected as material to the tenancy are not ones that are so critical that the tenancy could end if a trivial breach occurred.

I have considered clause nine of the addendum, which required the tenants to immediately notify the landlord if they were aware of damage to the home. There was no evidence presented to suggest the tenants had neglected to comply with this clause of the addendum. From the evidence before me I find that there is a history of the tenants requesting the landlord comply with section 32 of the Act. Further, there was evidence that the landlord was frequently on the property and would have been well aware of the need to make any repairs.

The tenancy commenced on May 1, 2015 and an email sent by the landlord on July 22, 2015 indicated the shrubs should be watered as they were dying. I am not convinced the tenants are responsible for the shrubs dying. There was no evidence before me the landlord took steps to support clause four of the addendum as a material term. No action was taken setting out an alleged breach of a material term until October 2017.

In relation to the alarm service, I find that once the tenants were given written notice of the need to be registered with the alarm service, they did so. No time-frame for compliance was given by the landlord, other than immediate, which fails to provide a specific date by which corrections should be made. However, the tenants did comply by registering and have undertaken to utilize the service.

If the clause regarding water main shut off was material to the tenancy then I find the landlord would have issued written notice to the tenants at the time the landlord believed that term was breached, in August 2017. The landlord did not issue notice until October 12, 2017, which leads me to find that the term is not material to the tenancy.

The landlord complained that the tenants had not been picking up dog feces on a regular basis, over a period of time. It was not until the tenants refused to participate in rodent control that the landlord issued written warning regarding breach of a material term. If this clause was material to the tenancy written notice would have been expected following the initial alleged breach. There was no evidence before me that any previous, proper notice had been issued by the landlord. Therefore, I find that clause 15 of the addendum is not a material term of the tenancy.

Therefore, I find that the tenancy may not end for the reasons provided by the landlord, relative to material terms of the tenancy.

In relation to the reason of significant interference and unreasonable disturbance, I have considered the conflict that has occurred between the parties and the nature of that conflict. The landlord has informed the tenants that the landlord has the right to enter the residential property and basement “common areas” without any notice to the tenants. The matter of entry to the residential property was addressed in the interim decision issued on December 11, 2017.

I find that the storage area and other areas in the basement are not common area. The Act defines common area as:

*“any part of residential property the use of which is **shared** by tenants, or by a landlord and one or more tenants...”*

(Emphasis added)

Clause 14 of the addendum indicated that the landlord would “use the remaining basement area for storage.” The landlord pointed out during the hearing that this was not a shared space. Use of a storage area does not confer a right of unbridled entry to the residential property by the landlord. If the landlord lived on the property and resided in a separate unit within the home and, for example, shared laundry facilities with the tenants, notice of entry to the laundry area would not be required. When the landlord resides elsewhere and wishes to enter areas of the basement or the residential property the landlord must issue proper notice of entry, in accordance with section 29 of the Act.

The landlord has been warned that excessive entry and/or entry without reasonable cause and proper notice could support a future claim for loss of quiet enjoyment and possible administrative penalties. The landlord is entitled to enter the residential property for the purpose of serving documents and notice of entry; however, the landlord is warned that right of entry should not be frivolous.

As a result of the insistence of the landlord that notice of entry was not required, I find that the conflict that has occurred on several occasions was, in part, the result of the actions of the landlord. I find that the conflict increased particularly after the tenants provided the landlord with information on proper notice of entry. The landlord responded by informing the tenants that

notice for entry to the residential property would not be issued. I find this aggravated the situation and contributed to an increase in conflict between the parties.

I find that the events that occurred on October 3, 2017 led the tenants to believe the landlord had sent the children away from the home. The tenants had asked the landlord not to return with the worker. I find that the tenants had no right to make such a request and that the landlord was not required to observe that request. However, I have found no evidence that proper notice of entry was issued by the landlord for October 5, 2017. This further aggravated the tenants and eroded the relationship between the parties. A failure to understand the legislation does not allow a party to avoid the legislation. I find that the landlords' failure to comply with the legislation contributed to the response elicited by the tenants on October 5, 2017.

The calls to the police may have formed an over-reaction by the tenants; however, I can find no basis of any significant interference of unreasonable disturbance caused by calls made to the police. No overt police action was taken by the police other than gathering basic personal information. The police told the parties the issues were related to the tenancy, not criminal in nature.

Tenants are entitled to communicate with the landlord by way of email and in writing. I can find no interference or disturbance caused by the written communication. The landlord may not have appreciated the written communication, but that communication does not form the basis to end a tenancy.

Therefore, I can find no cause to end the tenancy due to significant interference or unreasonable disturbance.

There was no evidence before me to support any risk to the landlord's health or safety. The landlord may well have a pre-existing heart condition, but no evidence of any risk caused by the tenants was supplied. I find that the landlord has made allegations that are not supported by evidence.

In relation to significant risk to the property, the allegation that the tenants refuse to cooperate with pest control was not borne out by the evidence. I find that the tenants have been making multiple requests for pest control, over an extended period of time. There was no evidence that the tenants leave doors and windows open more than any reasonable person might. In fact, most of the windows do not have screens; which could be installed by the landlord in order to mitigate the risk of pest infestations. Tenants cannot be expected to live in a home without being able to open windows for fresh air. At one point the tenants had a bag of bird seed on the stairs. This single incident does not support eviction for cause as it is so minor in nature. There was only a supposition that dog feces were attracting rodents; no evidence that this has been the case.

Therefore, after considering all of the relevant evidence before me I find that the one month Notice to end tenancy for cause issued on November 14, 2017 is of no force and effect and that it is cancelled. The tenancy will continue until it is ended in accordance with the Act.

Tenants' Claim:

The tenants have claimed compensation for the loss of quiet enjoyment and for damage to their property. The tenants allege the landlord has not complied the Act, by failing to adequately respond to a rodent problem and by repeated entry to the residential property without the required notice. The tenants have requested the landlord be ordered to comply with the Act.

By way of the interim decision issued on December 11, 2017, the landlord has been ordered to fully comply with section 29 of the Act in relation to any entry to the property. During the hearing held on January 16, 2018 the landlord was warned that a failure to comply could result in a claim by the tenants, setting out a further loss of quiet enjoyment and for potential administrative penalty, pursuant to section 87(3) of the Act.

Section 32 of the Act provides:

Landlord and tenant obligations to repair and maintain

- 32** (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*
- (a) complies with the health, safety and housing standards required by law, and*
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*
- (4) A tenant is not required to make repairs for reasonable wear and tear.*
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.*

From the evidence before me I find, commencing in August 2015, the landlord was adequately informed of the presence of rodents in the rental unit. The landlord had acknowledged this by email sent to the tenants and wrote there had not been a high enough priority placed on the "mouse situation." Therefore, I find that in August 2015 the landlord was put on notice of the need to respond to the tenants' concerns and that the landlord was required to take action, as required by section 32 of the Act.

Up to November 2016 the tenants had trapped multiple rats outside of the home and had informed the landlord of the smell, feces and sound of rodents. Rodents were also trapped inside of the home. I reject any suggestion that this level of rodent trapping would not have resulted in communication between the parties. There were emails back and forth that indicated the landlord was aware of the reports of rodents and evidence of some response by the landlord that traps would be brought to the property.

I find that the landlord response during 2015 and 2016 was inadequate and that the landlord abdicated the bulk of responsibility for rodent control to the tenants. The landlord supplied traps and poison but there was no evidence before me that the landlord took any other action until late 2016 when work was completed to board up the deck, which was a suspected point of egress into the home by rodents. The work on the deck points to an acknowledgment of the landlord that a rodent problem did exist; rather than supporting the landlords' initial response that the rodents could only enter through open doors and windows.

There appears to have been a period of time between early 2017 and July 2017 that written communication to the landlord did not occur. From the evidence before me it was not until June 2017 that the tenants found evidence of a mouse in the home, by way of feces in the dog dish. The tenants submit that they next communicated concern regarding rodents when they returned from vacation in September 2017.

When the tenants returned from vacation on September 10, 2017 and found evidence of mice in the kitchen cupboards and the food products destroyed by chewing, the tenants appear to have reached the limits of their tolerance. The tenants then informed the landlord they would no longer assist in any rodent control.

I find that the refusal of the tenants to be involved in rodent control was well within the right of the tenants. Any reasonable person would agree that the presence of rodents should be met with an immediate and focused response. Rather than commencing a program of trapping in and outside of the home in 2015 I find that the landlord almost exclusively left the tenants to carry out those duties. Rodent control was not the responsibility of the tenants.

I have rejected the landlords' contention that the presence of rodents is a fact of life when living in a rural location. Rodents may be present outside of a home; but when rodents reach numbers that results in entry to the home the obligation to maintain and repair requires a landlord to take appropriate preventative action; as suggested by the landlords' witness.

There was evidence that once the tenants refused to assist, the landlord began to make a concerted effort to address the rodent problem reported by the tenants. Shrubs near the home were removed and the landlord focused on trapping rodents. However, the bulk of the landlords' response occurred after the tenants placed their concerns in writing on September 11, 2017 and after the tenants had been dealing the problem, to different degrees, for an extended period of time.

In September 2017 the landlord wrote that the tenants should place food in containers and, again, that the tenants should not leave doors and windows open. I find that this advice contradicts the landlords' submission that there was only one mouse and no evidence of a rodent problem in the home. I found the statement regarding the gap under the pantry door was contradictory. Why would this gap, that could allow egress by rodents, pose a problem if there were no rodents in the home?

I have determined that rodents were inside of the home. This finding is based on the testimony of the tenants, the photographic evidence supplied by the tenants and the testimony of the landlords' witness who confirmed seeing feces. I was not convinced that the feces on the heat ducts and in other areas of the home were "old." On the contrary, I found that the presence of feces supported the tenants' claim that there had been a rodent problem in the home. The

inside of the ducts may well have been free of feces, but I find that the evidence points to rodents having been present on the upper portion of the ducts.

As in my previous assessment of the need for a professional pest control service, I have confidence in the testimony of the tenants', who reside in the home. I can see no reason that the tenants would "trump up" a claim of this nature. The complaints do not appear to have been contrived and commenced in what I find was a friendly, cooperative tone in August 2015. I find that the tenants were initially patient and had an expectation that the landlord would adequately respond. I find that the tenants showed incredible patience and tolerance. The tenants made efforts to trap rodents, had to deal with dead rodents, listen to the sounds of rodents at night and had to kill one rat that was not fully dispatched by a trap. From the evidence before me, once the tenants returned home on September 10, 2017 and found evidence of mice and damage, the tenants' patience reached a limit.

I have rejected the landlords' submission that the mattress and neck warmer were damaged by a dog or moths. The evidence supports, on the balance of probabilities that the damage was caused by rodents.

In relation to the food products damaged by rodents chewing into the bags, I find that this damage was the result of a failure to pursue a dedicated program of rodent control, from the time the landlord was first informed of the problem in August 2015. The landlords' suggestion that the tenants should keep food in containers may not be unreasonable, but a tenant should not have to deal with rodents throughout a tenancy. Further, there was no evidence before me that the landlord took any steps to provide rodent-proof containers for use in the kitchen.

The initial reports issued by both pest control companies both pointed to some potential points of egress. If the landlord had obtained a report and the assistance of a professional pest control company in August 2015 perhaps the issues of egress would have been addressed in a timelier manner. If early concerted preventative measures had been instituted by the landlord perhaps the tenants' food and personal property might not have been damaged and on-going issues regarding a loss of quiet enjoyment could have been avoided.

Section 28 of the Act provides:

Protection of tenant's right to quiet enjoyment

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

RTB policy suggests that a landlord is obligated to ensure that the tenants' entitlement to quiet enjoyment is protected. If a tenants' lawful enjoyment of the property is breached, a case for loss of quiet enjoyment may be supported. A loss of quiet enjoyment can be supported in cases

where a landlord was aware of the disturbance but failed to take reasonable steps to take corrective measures.

Policy also suggests that a breach to the entitlement of quiet enjoyment may form the basis for compensation, pursuant to section 67 of the Act. An arbitrator will take into consideration the seriousness of the situation and the degree to which the tenant has been deprived of the right to quiet enjoyment of the premises; combined with the length of time over which the situation has existed.

A claimant must take steps to minimize the loss claimed. I have determined that the tenants attempted to mitigate by informing the landlord in August 2015 of the need to respond to the rodent problem. The tenants' efforts to assist are not relevant; what is relevant are the steps the landlord took to respond, as required by section 32 of the Act.

The purpose of compensation is to put the person who suffered the loss in the same position as if the loss had not occurred. I find that the loss of the food products and the damage to personal property are the direct result of the landlords' failure to comply with section 32 of the Act and that the tenants are entitled to the costs claimed, with the exception of the mattress. I have reduced the sum claimed for the mattress as there was no evidence before me that this item was brand new.

I dismiss the claim for storage costs as I am not convinced that the damage caused to personal property meets a standard that would support the use of a storage locker.

I dismiss the claim for the cost of the professional pest control costs. The report was not required to prove the claim made.

In relation to the claim for loss of quiet enjoyment, I find that from the time the landlord was notified of the rodent problem in August 2015 onward, that the tenants suffered from varying degrees of unreasonable disturbance due to the presence of rodents in the home. The tenants, unwittingly, carried out rodent control duties that fall to the landlord. This does not relieve the landlord of the obligation to comply with section 32 of the Act. Given the on-going concerns elicited by the tenants to the landlord I am convinced that the tenants did suffer a loss of enjoyment of the property. This loss appears to have abated during the first half of 2017, but the discovery of feces in the dog dish in 2017 points to on-going egress by rodents into the home.

I have also considered the landlords' refusal to provide proper notice of entry and the insistence that notice was not required for access to the property. A tenant has the right to exclusive possession of the rental property, with the exception of notice given in compliance with section 29 of the Act. I find that the failure of the landlord to provide proper notice formed a loss of quiet enjoyment of the residential property. The tenants were informed the landlord could enter at any time; removing the right of exclusive possession. I find that the tenants are entitled to compensation due to the absence of notice of entry.

Therefore, taking into account the evidence before me, I find that the tenants suffered a loss of quiet and enjoyment as a result of on-going rodent problems in and around the home and the absence of consistent notice of entry to the property by the landlord. The tenants are entitled to compensation in the sum of \$5,600.00 for the period of August 2015 to December 2017,

inclusive. I have reduced the claim to an amount I find reflects a reasonable sum, representing the degree of loss and enjoyment, absent any punitive element.

Therefore, the tenants are entitled to the following compensation:

	Claimed	Accepted
Organic green lentils	4.99	4.99
Gluten free baking flour	13.99	13.99
Organic icing sugar	17.69	17.69
Gluten free almond flour	7.29	7.29
Organic baking cocoa	9.69	9.69
Organic sugar	10.99	10.99
Organic garbanzo bean flour	9.16	9.16
Granola bar mix	11.49	11.49
Neck warmer	26.88	26.88
Cotton crib mattress	458.08	200.00
Storage locker	183.27	0
Exterminator assessment	131.25	0
<i>Loss of quiet enjoyment:</i>		
June 2015 – November 2016 (17 mon. X \$300/mon.)	5,100.00	-
December 2016 – August 2017 (9 mon. X \$600.00/mon.)	5,400.00	-
September 2017 – December 2017 (4 mon. X \$900.00/mon.)	3,600.00	-
Loss of quiet enjoyment		5,600.00
TOTAL	\$14,984.77	5,912.17

The balance of the claim is dismissed.

As the tenants' claim has merit I find that the tenants are entitled to recover the \$100.00 filing fee cost from the landlord.

The tenants have been issued a monetary order that is enforceable through Small Claims Court. Pursuant to section 65(c (ii) of the Act, the tenants are at liberty to make deductions from rent owed up to the sum of \$6,012.17. Any sum deducted from rent owed will reduce the value of the monetary order by a corresponding amount.

During the hearing the tenants asked if they could change the locks to the rental unit. The tenants are at liberty to submit an application requesting permission to change the locks to the rental unit should further entry to the residential property be made in the absence of compliance with section 29 of the Act.

The landlords' application is dismissed.

Conclusion

The final decision should be read in conjunction with the interim decision issued on December 11, 2017.

The one month Notice to end tenancy for cause issued on November 14, 2017 is cancelled.

The tenants are entitled to compensation in the sum of \$5,912.17.

The tenants are entitled to filing fee costs.

The landlords' application is dismissed.

This decision is final and binding and 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 31, 2018

Residential Tenancy Branch