



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

On February 5, 2018, the Tenants submitted an Application for Dispute Resolution seeking to cancel a 1 Month Notice to End Tenancy for Cause dated January 26, 2018.

The Landlord and Tenant appeared at the hearing. The Landlord was assisted by their legal counsel Ms. EH. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Procedural and Preliminary Matters

The Tenants breached the Residential Tenancy Branch Rules of Procedure by failing to provide their documentary evidence to the Respondents a full two weeks prior to the hearing. The Tenants applied for dispute resolution on February 5, 2018, and served their documentary evidence to the Landlords on March 29, 2018. The Tenants submitted that the delay was because they were waiting to receive the Landlord's evidence.

The Landlords counsel indicated that the Landlord was prepared to accept the Tenants late evidence and proceed with the hearing if they could submit a couple of documents during or following the hearing.

The Landlords testified that they sent their documentary evidence to the Tenants more than one week prior to the hearing in accordance with the Rules of Procedure. The Tenants acknowledged receiving the Landlord's evidence.

The Tenants raised an issue regarding the poor legibility of a document provided by the Landlord. After discussing the document in question, it was identified as a registered mail receipt and I find that there was no prejudice to the Tenants to proceed with the hearing.

I find that the parties exchanged the documents before me and I accept their documents as evidence in this hearing. I authorized the Landlord to submit a couple of pages of late evidence at the conclusion of the hearing. The evidence was a copy of a letter from the Tenants dated April 6, 2018, and an excerpt from the *Privacy Act*.

The Landlords additional two pages of evidence were received by the Residential Tenancy Branch on April 9, 2018.

#### Issues to be Decided

- Does the Landlord have cause to end the tenancy?

#### Background and Evidence

The parties testified that the tenancy commenced in February 2011, as a month to month tenancy. Rent in the amount of \$1,460.00 is due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit in the amount of \$650.00. There was no pet damage deposit paid and the tenancy agreement does not allow for pets. Both parties provided a copy of the tenancy agreement.

The Landlord testified that they have concerns with harassing behaviour and other activities of the Tenants, and they also submit that the Tenants have breached a material term of the tenancy agreement by allowing a cat to live in the rental unit.

The Landlords testified that they noticed a cat on the property and cat food in a dish outside the rental unit. They testified that they spoke to the Tenants to remind them about the no pets clause of the tenancy agreement. The Landlord submitted that the Tenants told the Landlord it is a neighborhood cat that is not living with them. The Landlord suggested that the Tenants stop offering the cat food.

The Landlords believed that the Tenants continued to allow a cat to live in the unit, so they issued a breach letter dated August 21, 2017 to the Tenants, and set up an inspection of the rental unit for a month later on September 21, 2017. The Landlord testified that he found no evidence during the inspection that the cat was living in the rental unit.

The Landlords also testified that the Tenants are significantly interfering with the Landlord by engaging in inappropriate behaviour of photographing the Landlord and their family and harassing them. The Landlord submitted that the Tenant is engaging in illegal activity that is jeopardizing a lawful right or interest of the Landlord. The Landlords' counsel submitted that the Tenants behaviour is a nuisance and amounts to an invasion of privacy. The Landlord submitted sections 1 and 2 of the *Privacy Act [RSBC 1996]* in support of her submissions.

The Landlord submitted that the Tenants were taking photographs of the Landlord and their children on the rental property. The Landlords submitted that the photographs taken of their children made them feel fear that their children are vulnerable. They submit that the photos were taken surreptitiously and without consent. They submitted that they called the police who opened a file and recommended that the Landlords ask the Tenants to stop taking photographs.

The Landlord submitted that after they issued the breach letter in August 2017, the issues escalated and the Tenants yelled at the Landlord and mimicked the Landlord. The Landlord submits that the Tenants yelled for the Landlord to stop staring at them. The Landlord submits that the Tenants followed them into a local pharmacy and made them feel uneasy.

The Landlord submitted that the effect of all this is that they have restricted their children's outside playtime as they do not let their children go out in the yard as often.

The Landlord testified that due their concerns with the Tenants behaviour and the breach of the tenancy agreement, the Landlord issued a 1 Month Notice to End Tenancy for Cause dated January 26, 2018.

The Landlord selected the following reasons for ending the tenancy in the 1 Month Notice:

*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.*

*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 or the Landlord*
- *Jeopardize a lawful right or interest of another occupant or the Landlord*

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

In response, the Tenants submitted that they were not following the Landlord into the pharmacy. They submit that the Tenant Ms. AS is on a permanent disability and they frequently attend the pharmacy for medicine.

The Tenants acknowledged that they have taken photographs, and submitted that they are being disturbed by noise and their privacy rights are being infringed. They submitted that they took the photographs as evidence of a breach of their privacy rights. They submitted that taking photographs for this purpose is not illegal.

The Tenants submitted that the Landlord has an unfounded and feigned fear of them. They submitted that the Landlord's claims are preposterous as they have the right to look out their windows. They submitted that they observed the Landlord staring at them, so they watched back.

With respect to the cat, the Tenants submitted that the cat is not living in the rental unit. They submitted that the cat walks through the neighborhood and visits. The Tenants submitted that they have left food and water for the cat on public property.

The Tenants provided a declaration dated January 10, 2018, from Ms. SH who states she is the owner of the cat who is a valued part of the community and her family.

The Landlord testified that the declaration provided by the Tenants is not determinative of where the cat is living.

The Tenants submitted that the actions of the Landlord are abusive and amount to an invasion of the Tenants' rights to quiet enjoyment. The Tenants submitted that the Landlord wants them out so they can raise the rent.

### Analysis

In the matter before me, the Landlord has the onus to prove that the reasons to end the tenancy are valid. Based on the evidence and testimony before me, I make the following findings:

With respect to a breach of a material term of the tenancy, I find that the tenancy agreement specifically indicates that a pet damage deposit is not applicable and the wording “no pets” was written into the agreement and initialed by the Tenants. I find that the agreement does not allow for pets and that the no pet term is a material term of the tenancy agreement.

I have considered whether or not the Tenant’s breached a material term of the tenancy agreement and I find that they have not. I accept the testimony and evidence of the Tenants that the cat is a neighborhood cat that roams the neighborhood and surrounding properties. The Tenants testified that the cat does not live with them and I find that the act of leaving food out for the cat does not amount to a breach of the tenancy agreement. There is insufficient evidence from the Landlords to establish that the Tenants have breached a material term of the tenancy agreement by having a pet live in the rental unit.

I have considered that Landlords submissions regarding the alleged harassment and allegations of inappropriate behavior.

I find that the Landlord has provided insufficient evidence to establish that the Tenants were harassing the Landlords. I find that the Tenants have the right to use the premises, including looking out the windows. Other than the Landlords stating that they felt uneasy at the pharmacy, there was no evidence submitted that the Tenants had behaved inappropriately on that occasion. I am mindful that the covenant of quiet enjoyment protects the Tenants from substantial interference with the enjoyment of the premises for all usual purposes.

With respect to the submissions regarding illegal activity and a breach of privacy; given that this is a tenancy situation where both parties share the rental property, and given the nature of the incident, and the explanations of the Tenants on why they were taking photographs, I find that the behavior does not amount to a situation where the Tenants engaged in illegal activity that adversely affected the quiet enjoyment, security, safety or physical well-being the Landlord, or jeopardized a lawful right or interest of the Landlord. The Tenants allege that their quiet enjoyment was disturbed and they are collecting

evidence in support of their position. I find that taking photographs on the rental property for this purpose is not unreasonable.

I find that the Landlord has not provided sufficient evidence to support ending the tenancy; therefore, I set aside the 1 Month Notice to End Tenancy for Cause, dated January 26, 2018.

I order the tenancy to continue until ended in accordance with the Act.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were successful with their application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. I authorize the Tenants to withhold \$100.00 from one future rent payment.

### Conclusion

The Tenants' application is successful. The 1 Month Notice issued by the Landlord dated January 26, 2018, is set aside.

The tenancy will continue until ended in accordance with the Act.

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: April 18, 2018

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Residential Tenancy Branch