



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on March 7, 2018.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlords have the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issue to be Decided

Should the Notice be cancelled?

### Background and Evidence

The tenancy began on September 1, 2016. Rent in the amount of \$1,250.00 was payable on the first of each month. The tenants paid a security deposit of \$625.00.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on April 30, 2018.

The reason stated in the Notice was that the tenants have:

- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- Put the landlord's property at significant risk.

The landlords testified that on March 3, 2018, the tenants hired a contractor to remove the snow from the driveway, which included the parking pad. The landlords stated that the parking pad was engineered and there is a three foot retaining wall that is then followed by a 12 foot retaining wall. The landlords stated that the tenants did not get their approval to have the snow removed.

The landlords testified that they live next door to the rental property and they heard a loud bang and they saw a front end loader on the parking pad pushing snow over the retaining wall. The landlords stated that the loader hit a concrete parking bumper pushing off to the side of the driveway. The landlords stated that the front end loader is an extremely heavy piece of equipment and should not have been on the parking pad.

The landlords testified that the contractor was working unsupervised and was very close to the edge of the parking pad and did not seem to notice the first three foot drop. The landlords stated that this seriously jeopardized their health and safety because if the equipment fell over the retaining wall it could have seriously hurt their person and caused structural damage to their property or the retaining wall.

The landlords testified that they stopped the contractor and told them to leave the property, which they did.

The landlords testified that on March 5, 2018, they heard the front end loader coming back into the yard scrapping ice and clearing snow from the driveway. The landlords stated that they believe the tenants were being sneaky as it was at a time they would normally be home. The landlords stated that they can no longer trust the tenants.

The landlords testified that in the snow were tree branches which had fallen in a previous storm and because the contractor did not call the site "call before you dig" could have seriously damaged the gas line when the tree limbs were dragged across the roadway. The landlords confirm no damage occurred.

The tenants testified that they are responsible for snow removal in their tenancy agreement. The tenants stated that they used this particular contractor as they have

seen this contractor remove snow from the rental unit below them that is also owned by the landlords and they also do lots of other snow removal in their area.

The tenants testified that they walked the property with the contractor the day before the work was done so the contractor knew the boundaries of the property and the property was not at risk.

The tenants testified that the landlords sent the contractor away and the landlords told them not to have then comeback. The tenants stated that they did not ask the contractor to come back on March 5, 2018.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlords have not provided sufficient evidence to show that the tenants have:

- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- Put the landlord's property at significant risk.

In this case, the tenancy agreement stated that the tenants are responsible for snow removal. The agreement does not provide the tenants with any instructions on what is required for removal or disposal or that they are required to get permission from the landlords.

I accept on March 3, 2018, the tenants hired a licensed contractor that was known in the area, to remove the ice and snow from their driveway; I find this reasonable due to the weather conditions.

In this case, the contractor pushed the snow over the retaining wall, which their machine was close to the edge of the retaining wall.

The evidence of the landlords that this put their health and safety at risk, as the machine could have fallen over the retaining wall as it appeared the contractor did not know of the drop off.

I find this is simply the landlords' opinion, as the contractor was shown the boundary line the day prior and there was no documentary evidence from a qualified person to make the assessment that the equipment was working in a dangerous manner.

I find the landlords have failed to prove that on March 3, 2018, the tenants seriously jeopardize the health or safety of another occupant or the landlord.

I accept on March 3, 2018, the contractor hit the parking bumper and pushed it on the driveway; I do not find this put the landlords' property at significant risk as this is easily fixable.

I am also not satisfied that the equipment used to remove the snow was too heavy, as there was no documentary evidence from a qualified person to make that assessment, as it would be reasonable to conclude the roadway and parking pad was likely built by using such equipment. I find the landlords have failed to prove the tenants put the landlords' property at significant risk.

Additionally, I find it would have been reasonable for the landlords to indicate in their tenancy agreement any weight restriction for the parking pad, if one was required.

I am also not satisfied that on March 5, 2018, anything significant occurred when the front end loader came back removing ice ruts and snow from the driveway, whether or not they were asked to come back by the tenants.

I find the landlords' position that this put their property at significant risk or that the tenants should have contacted "called before you dig" is unreasonable. The loader was only removing ice ruts and snow from the roadway and not digging anything.

While I accept there were tree branches in the snow bank and could have been dragged, I find it highly unlikely that it could damage any services under the ground, if properly installed. And in any even no damage occurred.

Furthermore, even if the landlords do not trust the tenants because of the March 5, 2018, incident, I find that is not grounds to end the tenancy.

In light of the above, I grant the tenants' application to cancel the Notice, issued on March 7, 2018. The Notice has no force or effect. The tenancy will continue until legally ended.

Since I have granted the tenants' application, I find that the tenants are entitled to recover the filing fee from the landlords. I authorize the tenants a onetime rent reduction in the amount of \$100.00 from a future rent payable to the landlord's to recover the cost of the filing fee.

### Conclusion

The tenants' application to cancel the Notice, issued on March 7, 2018, is granted. The tenancy will continue in accordance with the Act until legally ended.

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: June 7, 2018

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Residential Tenancy Branch