



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CRICHTON HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”) and for the recovery of the filing fee paid for this application.

Both Tenants were present for the hearing, as was a family member of the Tenants. Legal counsel for the Landlord was present for the hearing and an agent for the Landlord (collectively the “Landlord”) joined the hearing approximately 20 minutes after it began.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenants confirmed receipt of a copy of the Landlord’s evidence package. Therefore, I find that both parties were duly served in accordance with Sections 88 and 89 of the *Act*.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The parties were in agreement that the tenancy began on January 31, 2015 and that a security deposit of \$336.00 was paid. The Landlord stated that monthly rent at the start of the tenancy was set at \$672.50. The Tenant stated that their current monthly rent is \$744.60. The tenancy agreement was submitted into evidence and confirms the tenancy start date, security deposit and initial rent amount.

On December 12, 2018, the Landlord served the Tenants with a One Month Notice by registered mail. The Tenants confirmed receipt of the notice on or around December 17, 2018. The One Month Notice, dated December 11, 2018 was submitted into evidence and states the following as the reason for ending the tenancy:

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

Further details were stated on the One Month Notice as follows:

*The tenant has an additional occupant not named on the lease residing in the unit contrary to clause 13 of the Rental Agreement and keeps a pet cat in the unit contrary to clause 14 of the Rental Agreement. The tenant is in breach of s.28 of the Residential Tenancy Act, as complaints from other residents regarding the strong smell of marijuana coming from the tenant's rental unit have been reported to the landlord. The tenancy was given notice of these material breaches and has not complied with the Rental Agreement.*

(Reproduced as written)

The Landlord provided testimony that the tenancy agreement does not allow pets without written permission and also states that only the occupants listed on the tenancy agreement may reside in the rental unit. Any additional occupants must have written

permission from the Landlord to reside in the rental unit. The Landlord noted the clauses in the tenancy agreement that state this. The Landlord stated that the Tenants have a pet cat in the rental unit and that their mother now resides in the rental unit.

The Landlord submitted that for several months they have been receiving complaints from other residents of the rental building regarding the smell of cannabis coming from the Tenants' rental unit. The Landlord submitted into evidence a previous dispute resolution proceeding decision, dated June 24, 2016. The decision outlines a settlement agreement between the parties in which a One Month Notice was cancelled and the Tenants were ordered not to smoke cannabis inside the rental unit.

The Landlord submitted a letter to the Tenants dated November 23, 2018 which was sent to the Tenants by registered mail. The letter states that the Tenants are in breach of a material term of their tenancy agreement regarding having a pet in the rental unit and having an additional occupant. The letter also states that the Tenants are in breach of a previous order to not smoke cannabis in the rental unit and in breach of Section 28 of the *Act* regarding disturbing the right to quiet enjoyment of the other residents. The letter states that the Tenants have 3 days to resolve the issues or the tenancy may be ended.

A second letter, dated December 11, 2018 was submitted into evidence. The letter was sent to the Tenants with the One Month Notice. The letter states that throughout the tenancy the Tenants have allowed another occupant to reside in their rental unit and continue to do so. The letter also states that throughout the tenancy the Tenants have had a cat who continues to live in the rental unit and that the Tenants continue to disturb the other residents' right to quiet enjoyment through the smell of cannabis smoke.

The Landlord also submitted into evidence complaints letters from other tenants in the rental building as well as correspondence with the property manager. An email dated October 25, 2018 from the property manager to the Landlord stated that there was a strong cannabis smell on the 2<sup>nd</sup> floor that started at the elevator and ended at the door of the Tenants' rental unit.

An email dated October 31, 2018 from other residents stated that there are at least two residents on the second floor who are not following the rules regarding smoking cannabis as the smell was noticeable on this floor. A note dated October 31, 2018 from a building resident stated that there is an "awful odor" in the hallway on the second floor. A letter received on October 31, 2018 stated that there is a strong cannabis smell on the second floor that the writer of the letter believes is coming from the Tenants' rental unit.

A letter dated November 1, 2018 from another resident stated that there is an odour of cannabis on the second floor that is prominent by the Tenants' rental unit. A letter received by the Landlord on November 1, 2018 stated that there are weird smells on the second floor that they believe is from the Tenants' rental unit. There were also additional emails submitted from the property manager which stated that there is a noticeable smell on the second floor that residents are complaining about.

The Tenants stated that they have been living in different units of this rental building since 2007. They moved into the current unit in 2015. In 2007 they asked the property manager at the time if they could have a cat and as they were given verbal permission, they have had a cat living with them since this time.

The Tenants also stated that in 2013 they moved into a different rental unit and the new property manager had told them it was fine that they had a cat. They lived there until 2015 when they moved into their current rental unit.

The Tenants provided testimony that their mother moved into the rental unit in 2015. They stated that the property manager at the time was aware that their mother had moved in and recorded her name to be aware of building occupants in case of an emergency. They also stated that they asked the property manager whether they should sign a new tenancy agreement to add their mother's name. However, the Tenants stated that they were not asked to sign a new tenancy agreement and their mother continued to live with them in the two-bedroom rental unit.

The Tenants stated that they have nothing to hide and that they were not aware that the tenancy agreement did not allow them to have a pet or an additional occupant without written permission. They stated that previous property managers had been aware that they had a cat and an additional occupant, and that verbal permission had been provided.

As for the claim of smoking cannabis, the Tenants stated that they have never smoked cannabis in the rental unit and that one of the Tenants uses medical cannabis for treatment of pain. The Tenants submitted a doctor's note dated June 10, 2016 confirming that the Tenant uses cannabis for pain and a copy of a medical cannabis certificate.

The Tenants testified that they tried baking with cannabis a few months ago and wonder if this was the smell noticed by other residents. They stated that the next day they used

cloves and cinnamon to mask the smell which also created a strong odour from their rental unit. However, since November 1, 2018, they stated that they have not baked with cannabis in the rental unit and maintain that they have never smoked in the rental unit.

The Tenants confirmed that they received the breach letter from the Landlord. Prior to receipt of this letter, the Tenants stated that they believed the cat and the additional occupant were not issues due to permission received from previous property managers.

The Landlord stated that the Tenants have an obligation to follow the tenancy agreement. They stated that there was a failure on the part of their property managers to report the issues, but this does not mean that the Tenants have not breached the tenancy agreement.

The Tenants submitted a written statement in which they submit that 3 days notice was not enough to resolve the issues as stated by the Landlord and that the Landlord did not offer for them to sign a new tenancy agreement, which they were willing to discuss.

The Tenants submitted a letter to the Landlord's legal counsel, dated November 30, 2018. In the letter they question why the property manager, who knew they had a cat and was aware their mother moved into the rental unit in 2015, did not ask them to sign a new tenancy agreement.

The Tenants also submitted into evidence letters from other residents stating their awareness of the additional occupant and the cat in the rental unit, photos of baking and a hydro meter reading showing an increase during a time when the Tenants stated they were baking.

The Landlord submitted a 7-page written submission into evidence in which they outline the timeline of events that led to serving a One Month Notice to the Tenants. On page 4, the statement notes that the Landlord did see the cat in the rental unit in the summer of 2016, however the Landlord did not receive any written notice informing them about the cat or notification that it was residing in the rental unit permanently.

### Analysis

Section 47(4) of the *Act* states that a tenant has 10 days in which to dispute a One Month Notice. As the Tenants confirmed receipt of the One Month Notice in the mail on December 17, 2018 and they filed an Application for Dispute Resolution on December

21, 2018, I find that they applied within the timeframe provided by the *Act*. As such, the matter before me is whether the reasons for the One Month Notice are valid.

As stated in rule 6.6 of the *Rules of Procedure*, when a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The One Month Notice states that the notice was served to the Tenants due to a breach of a material term of the tenancy agreement that was not corrected within a reasonable time to do so, pursuant to Section 47(1)(h) of the *Act*.

*Residential Tenancy Policy Guideline 8: Unconscionable and Material Terms* provides further clarification on material terms in part as follows:

*A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.*

*To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.*

The Landlord provided testimony and evidence regarding 2 issues that were a breach of the tenancy agreement: having an additional occupant in the rental unit without permission and having a pet in the rental unit without permission. They also presented testimony and evidence regarding the Tenants smoking in the rental unit which they stated was a breach of Section 28 of the *Act*. Although the documentary evidence of the Landlord states that smoking cannabis in the rental unit was impacting the right of other tenants to have quiet enjoyment of the property, the One Month Notice was served in relation to a material breach only.

The parties were not in agreement as to whether the Tenants are smoking cannabis in the rental unit. When two parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to establish their claim.

The Landlord submitted letters and notes from other residents who complain about a smell on the second floor of the rental building. While some of the letters indicate a

belief that the smell is coming from the Tenant's rental unit, others just note that the smell is on the second floor. None of the letters indicate with any certainty that the smell is coming from the Tenant's unit and other letters note an odd smell, but do not state that the smell is due to cannabis from the Tenants.

I do find that the Tenants agreed through a previous dispute resolution proceeding not to smoke cannabis in the rental unit, however I do not find sufficient evidence to establish that they are. I also do not find evidence before me that this is a breach of a material term of the tenancy agreement as the landlord's evidence and testimony related to the Tenants not following a previous decision and breach of Section 28 of the *Act* in terms of a right to quiet enjoyment. As such, I am not satisfied that the Tenants have breached a material term of the tenancy agreement through the Landlord's claim that they are smoking cannabis in the rental unit.

As for the claim of an additional occupant in the rental unit and a pet cat in the rental unit, the Tenants admitted that this is true. However, they stated that the cat has been present since 2007 and their mother has been residing in the rental unit since 2015. The Tenants stated that the property manager provided verbal permission to have a cat and was aware that their mother moved into the rental unit in 2015. The Landlord stated that it was a failure on the part of property management to not advise the Landlord of the cat and the additional occupant.

As stated in Policy Guideline 8, a material term is a term that both parties agree is a significant and important term of the tenancy agreement. While I find that the tenancy agreement outlines rules about additional occupants and pets and require that written permission is obtained for both, I find evidence before me that the Landlord was aware of the breaches around the time they first occurred.

I find that a property manager is an agent of the Landlord and therefore not taking steps after the breaches occurred leads me to find that the presence of a pet and an additional occupant on the rental property are not material terms of the tenancy. Had an additional occupant and a pet been a material term such that even a trivial breach would lead to ending the tenancy, I find it reasonable that the Landlord or an agent of the Landlord would have acted on the matter at the time they became aware of the issues and not approximately 12 years and 4 years after the fact.

As such, I do not find that the Landlord met the onus to establish, on a balance of probabilities, that the Tenants have breached a material term of the tenancy and that the tenancy should end as a result. Instead, I find that the Tenants were successful in

their application to cancel the One Month Notice. The One Month Notice dated December 11, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

As the Tenants were successful with their application, pursuant to Section 72 of the *Act*, I award them the recovery of the filing fee paid for the application in the amount of \$100.00. The Tenants may deduct \$100.00 from their next monthly rent payment.

### Conclusion

The One Month Notice dated December 11, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*. Pursuant to Section 72 of the *Act*, the Tenants may deduct \$100.00 from their next monthly rent payment to recover the filing fee paid for the Application for Dispute Resolution.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 22, 2019

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Residential Tenancy Branch