



# 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 a 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on January 15, 2021.

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 issued be cancelled?

### Background and Evidence

The tenancy began on June 1, 2017. Rent in the amount of \$1,807.00 was payable on the first of each month. The tenants paid a security deposit of \$800.00 and a pet damage deposit of \$400.00.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on February 28, 2021.

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

- Tenant has allowed an unreasonable number of occupants in the unit.
- Tenant or 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 or a person permitted on the property by the 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
  - Jeopardized a lawful right or interest of another occupant or the landlord;
- The tenant has assigned or sublet the rental unit without landlord's consent.

I clarified with the landlords at the start of the hearing regarding illegal activity and it was determined at the hearing that illegal activity is not the issue, as it is related to the smoking of marihuana. It was also clarified at the hearing that the tenants have not assigned or sublet the rental unit as the tenants are living in the premise. Therefore, I find it not necessary to consider the reason of illegal activity or the reason of assigned or sublet the rental unit.

The following testimony was given for the reason of 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.

The landlord testified that the building is a fourplex and they have been receiving complaints from the occupants that are living above the tenants' rental unit that the tenants are smoking marihuana in the rental unit and the smoke is entering their unit through the vents.

The landlord testified they have been informed by the occupants that this is a breach of their rights to quiet enjoyment due to smoke entering their rental unit and they have been doing what is reasonable to rectify the problem. The landlord stated they have not been able to enter either units to investigate, because the occupants in the upper unit, have children that are immune compromised and the tenants in the lower

unit wants proper 24 hours notice to enter. The landlord stated that they must rely upon the evidence of the occupant JF for this reason.

Witness JF for the landlord testified that they moved into the premises on June 29, 2020. JF stated that shortly after they moved in they could smell marihuana, but it did not become an issue until October 2020, when the heat was turned on and the smoke would enter their rental unit through the vents.

JF testified that in December 2020 that the smoke entering their unit was getting really bad and often the smell is being masked by cooking. JF provided the following dates and times:

- December 20, 2020 at 4:30 pm, smell was extremely strong, lasted 30 minutes;
- December 24, 2020 at 6:45am, strong smell woke me up out of a sleep;
- December 28, 2020, at 5pm, power went out extremely overwhelming/potent marijuana smell;
- December 29, 2020 at 6:50 am, strong smell woke me and my son up out of a sleep;
- January 1, 2021 at 10:30am, strong smell, lasted 30 minutes;
- January 4, 2021 at 11:30pm, very strong smell;
- January 5, 2021, at 7pm witness the tenant smoking marijuana by his truck;
- January 8, 2021, very strong smell again causing daughter breathing problems; and
- January 9, 2021, an extraordinary strong smell again causing daughter breathing problems.

JF testified that they notified the landlord of these complaints, and on January 11, 2021 they were informed the landlord had advised the tenants to immediately stop smoking within their unit.

JF testified that that since the warning letter was issued the tenants continue to smoke significantly impacting their family's health. And on January 24, 2021, there was a very strong smell of marihuana entering their unit, and it continued up to March 3, 2021, where there has been no marihuana detected since then.

The landlord testified that the tenants have also plugged the venting system and that information was received from the tenant's sister, who said that she had stuff the vent in the bedroom and that they had added a carbon filter on the bathroom fan. The landlord stated that they have done research since these complaints were received and plugging

vents is a sign of attempting to restrict smoke from entering the venting system. The landlord stated that this is also interfering with the furnace.

The landlord testified that when they tried to access the tenant's rental unit, they have been told that they must give the proper 24 hours notice.

The landlord testified that there were also prior issues of strong cooking smells going into the upper unit with the prior occupant that had lived above the tenants. The landlord stated at that time they had looked into adding a venting fan; however, because of the character of the building they were not able to. The landlord stated that the prior occupants did not associate the smell with smoking marihuana, as they did not know what marihuana smells like; however, it all makes sense now.

The tenants testified that they do not smoke in the rental unit. The tenants stated that the male tenant does smoke marihuana on a daily basis; however, that has always been done outside and that the smoke could be entering the windows due to the wind. The tenants stated that the tenancy agreement only says no smoking in the rental unit. The tenants stated that since they received the warning letter on January 11, 2021, that the male tenant now leaves the property to smoke.

The tenants testified that the only reason why they wanted proper notice to enter the rental unit is because the landlord just wanted to change the furnace filter as the furnace for the premise is located in their rental unit and it was not convenient and they have to secure their pet, it was not because of any complaints received.

The tenants testified that the only reason one of the vents were blocked in the bedroom was because they found the room would get too hot. The tenants stated that this would simply force more heat into the other vents. The tenants stated this was not done to coverup smoke because they are not smoking.

The following testimony was given for the reason of the tenants have allowed an unreasonable number of occupants in the unit.

The landlord testified that the tenants have an unauthorized occupant living in the rental unit, which is contrary to the tenancy agreement, as rent is based on two tenants. The landlord stated that they gave the tenant until February 28, 2021 to remove the additional occupant.

The tenants testified that in March of 2020, they had the female tenant's sister move in because they were having financial problems due to the pandemic. The tenants stated that they did not think that this would be an issue. The tenants stated that the unauthorized occupant has not yet vacated because they were waiting for this hearing.

The landlord testified that the tenants on January 15, 2021, placed a security camera in their window, and they have received complaints from other occupants. This is interfering with the other occupants. The landlord stated that the tenants were given a ceased letter on January 15, 2021.

The tenants testified that they purchased a camera for the purpose of making sure their truck is safe, as they often have tools in the back and that there were other issues going on at the time, and they thought it was a good idea.

### 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:

- Tenant has allowed an unreasonable number of occupants in the unit.
- Tenant or 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;

**In the regards to smoking marihuana, which is alleged to be impacting the upper occupants, I make the following findings.**

In this case, the landlords gave written notice to the tenants on January 11, 2021 and issued the Notice on January 15, 2021. I find there was no evidence by JF that between January 11, 2021 and January 15, 2021 of any incidents of marihuana smoke that would trigger the issuance of the Notice. While there are subsequent allegation

those were after the Notice was issue and does not form the basis of the issuance of the Notice at that time. There must be a breached between the issuance of the warning letter and the Notice.

Further, I find these are conflicting reports between the occupant and the tenants with no other witness to verify the allegation of smoke. The evidence of JF is that the smoking of marihuana is impacting their family as it is entering their rental unit through the venting. The evidence of the tenants are they are not smoking in the rental unit. The evidence of the tenants was that they admit that the male tenant smokes outside on the property which is not contrary to the agreement.

While I accept the occupants of the upper unit have children that are immune compromised, and the impact of second-hand smoke can be dangerous. However, the landlords have not had access to their rental unit to investigate that these complaints are founded. There are safe ways for the landlord to enter the premise, such as masking and removing the children from the room so the landlord can determine if there is smoke entering their unit. Evicting someone from their home is very serious, as these allegations could leave another family homeless. You cannot claim loss of quiet enjoyment if you have not given the landlord the opportunity to access the rental unit to investigate.

Furthermore, I am not satisfied that the landlord specifically asked the tenants to be allowed access to their unit to determine if it smoke free. If access was denied by the tenants at the time the request was made for this reason, it would be reasonable to conclude that tenants are avoiding detection, as the smoke would be gone 24 hours later. What would be reasonable for the tenants, if the landlord attended the premise to investigate these complaints at the time they are made, to be allowed access to prove otherwise as this would protect their tenancy.

Based on the above, I am not satisfied on the balance of probability that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord or has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

However, as the tenants admitted that they do smoke marihuana outside on the premise, which I note is not contrary to their tenancy agreement. However, even if that is the case, smoke could be entering the occupants window due to the wind, which would be unreasonable. That was not the allegation of the landlord's witness.

As the tenants' have testified at this hearing that they are no longer smoking on the property, I find it appropriate to make the following Order. **I Order the tenants to cease any smoking anywhere on the property to ensure this could not be a future issue. Should the tenants fail to comply with this Order, the landlords are entitled to give notice to end the tenancy for failure to comply with this order.**

While I am satisfied that there has been evidence of the tenants blocking vents in the rental unit, and this may have been done because they want to have a roomer cooler; however, that could interfere with the mechanism of the furnace. The furnace heats three other rental units and the tenants do not have the right to interfere with that equipment.

Therefore, I find it appropriate to make the following Order. **I Order that tenants that they must remove any thing that restricts or prevents the airflow from any vents or fans within two days of receiving this Decision.** The landlords are entitled to give the tenants' 24 hours notice of inspection to ensure this Order has been complied with.

In the regards to reason of the tenant has allowed an unreasonable number of occupants in the unit, I make the following finding.

In this case, I am not satisfied that the tenants have an unreasonable number of occupants in the rental unit because this is a two-bedroom residence and it is not uncommon to have three people. However, I accept the tenants do not have the consent of the landlord for the additional person to be living in the premise on a full time basis, which may be a material breach of their tenancy agreement; however, that was not the reason stated in the Notice.

In addition, at the time the Notice was issued on January 15, 2021, the tenants had until February 28, 2021 to remove the unauthorized person. Based on this, I cannot find the issuance of the Notice at the time was based on this reason.

In the regards to camera, which is alleged to be impacting the other occupants, I make the following findings.

I am not satisfied that the camera that was place on the tenant's windowsill was a breach of any of the reasons stated in the Notice. The landlords became aware of this issue on the date the Notice was issued and there is no evidence that this has significantly interfered with any other occupant of the building at the time, such as misusing of the recording for another intent.

I accept the evidence of the tenants that this was done to protect the tenants truck and that they worried about other factors, which was not clearly identified; however, it is recording other occupants of the building which is not appropriate for tenants to do.

There are other ways to ensure their truck is secure, such as a secured canopy that locks or an interior camera. All tenant are entitled to ensure they have reasonable privacy. Only the landlord has the rights to install cameras that record the common areas to protect the property and the safety of the residence of the building.

I find it appropriate to make the following Order. **I Order the tenants to remove any cameras from the windowsills that record the common areas, such as the parking lot, this must be done within two days of this decision being received. Should that camera not be removed as I have Ordered, the landlord is entitled to issue a notice to end tenancy for failure to comply with my order.**

In light of my above findings, I am not satisfied that that the Notice has been proven by the landlords', I find I must cancel the Notice. The tenancy will continue until legally ended in accordance with the Act. Therefore, I grant the tenant's application to cancel the Notice.

As the tenants were successful with their application, I find the tenants are entitled to recover the cost of the filing fee the landlords. I authorize the tenants a onetime rent reduction of \$100.00 from a future rent payable to the landlord.

### Conclusion

The tenant's' application to cancel the Notice, is granted.

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: March 10, 2021

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Residential Tenancy Branch