



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, MNDCT, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause; an order that the landlords comply with the *Residential Tenancy Act*, regulation or tenancy agreement; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application.

Both tenants and one of the landlords attended the hearing and the landlords were represented by an Advocate. One of the tenants and the landlords' Advocate each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agreed that the tenants have provided the landlords with all of the tenants' evidentiary material, however the landlords have not provided any evidence to the tenants. The landlords' Advocate stated that she tried multiple times to serve the evidence but the tenants didn't open the door. That was disputed by both tenants.

Any evidence that a party wishes to rely on must be provided to the other party. There were other methods the landlords could have used to serve the tenants with their evidence, and since the landlords have not done so, I declined to consider any of the landlords' evidentiary material. All evidence of the tenants has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Have the landlords established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, specifically a verbal agreement made with the previous landlords?
- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for missed work?

### Background and Evidence

**The landlords' Advocate** testified that this fixed-term tenancy began on September 1, 2014 and reverted to a month-to-month tenancy after August 31, 2015, and the tenants still reside in the rental unit. Rent in the amount of \$900.00 was payable on the 1<sup>st</sup> day of each month, which has been increased over time and is now \$974.00 per month, and there are no rental arrears. The landlords' Advocate is not certain how much the landlords collected as a security deposit, but should have been \$450.00, and does not know if a pet damage deposit was collected. The tenants have provided a copy of a portion of a tenancy agreement, but is missing a page regarding the deposits. The rental unit is an apartment in a 2-story building containing 24 units. The landlords are the current caretakers and managers, who also live in the rental complex.

The landlords' Advocate also testified that on January 31, 2022 one of the named landlords posted to the door of the rental unit a One Month Notice to End Tenancy for Cause. A copy of pages 1 and 2 of the 3-page form has been provided for this hearing by the tenants. It is dated January 31, 2022 and contains an effective date of vacancy of February 28, 2022. The reasons for issuing it state:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

It also contains an explanation of the details of cause, including repeated late rent, but doesn't indicate when rent was paid for those months. The landlords' Advocate testified that rent was paid on April 2, 2021; November 7, 2021; December 3, 2021 and October 10, 2021. The receipts issued for payment of rent indicate a \$40.00 late fee, but none have been paid or enforced.

The by-law has a quiet time between the hours of 11:00 p.m. and 7:00 a.m. The tenant came screaming at 12:30 a.m. when he received the Notice to end the tenancy. The tenants' behaviour is excessive noise at 2:00 or 3:00 a.m.

**The tenant** testified that there is no proof of any of this.

Further, the previous manager of the apartment building had a verbal agreement with the tenant that rent could be late from time-to-time, but that is not being honoured by the current landlords. The tenant seeks an order that the landlords comply with the verbal agreement. The current landlords say that rent has to be paid by 11:59 p.m. on the 1<sup>st</sup> day of each month, but that doesn't line up with the tenant's paydays.

The tenants have provided a Monetary Order Worksheet setting out the following claims, totaling \$508.50:

- \$258.00 for 12 hours of missed work;
- \$150.50 for 7 hours of missed work; and
- \$100.00 for the dispute fee.

The tenant testified that he had to take 1 ½ days off work to fight the notice to end the tenancy, and due to the amount of information that had to be printed and uploaded.

### Analysis

Firstly, where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. In this case, the landlords have not provided a copy of a One Month Notice to End Tenancy for Cause. The tenants have provided 2 pages only of the 3-page form. The *Act* states that any notice given by the landlord must be in the approved form. Since I cannot be satisfied what exactly was served, other than the 2 pages provided by the tenants, I am not satisfied that the Notice given was in the approved form, and therefore I cancel it.

With respect to the tenants' application for an order that the landlords comply with the *Act*, regulation or tenancy agreement, the tenant testified that the tenants had a verbal agreement with the previous managers that rent could be late. There is no evidence to substantiate that testimony, and the tenancy agreement specifies that rent is due on the 1<sup>st</sup> day of each month. Therefore, I dismiss the tenants' application for an order that the landlords comply with the *Act*, regulation or tenancy agreement.

The *Act* also permits claims for recovery of a filing fee, but not costs related to preparing for a hearing. Therefore, I dismiss the tenants' application for monetary compensation. However, since the tenants have been partially successful with the application, the tenants are entitled to recovery of the \$100.00 filing fee. I grant a monetary order in

favour of the tenants in that amount and I order that the tenants be permitted to reduce rent for a future month by that amount, or may otherwise recover it by filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

### Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated January 31, 2022 is hereby cancelled and the tenancy continues.

The tenants' application for an order that the landlords comply with the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

The tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 as recovery of the filing fee, and I order that the tenants be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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: May 25, 2022

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Residential Tenancy Branch