



# 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 Two Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”).

The first application was filed on May 23, 2022, to a cancel One Month Notice to End Tenancy for Cause, issued on May 20, 2022. The second application was filed on May 31, 2022, to dispute a second One Month Notice to End Tenancy for Cause issued on May 30, 2022, (the “Notices”).

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

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I note the landlord has file a large volume of evidence in the attempt to raise other issues that are not before or related to the Notices. I will only consider relevant evidence that are related to the details within 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.

### Issues to be Decided

Should the Notices be cancelled?

### Background and Evidence

The parties entered into a one-year fixed term tenancy that began on July 1, 2021 and is to expire on June 30, 2022.. Rent in the amount of \$3,880.00 was payable on the first of each month. The tenants paid a security deposit of \$1,940.00 and a pet damage deposit of \$1,940.00. Both parties provided a copy of the tenancy agreement, which I will refer to later in this decision.

The parties agreed that the Notices was served on the tenants indicating that the tenants are required to vacate the rental unit on June 30, 2022.

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

- Tenant has assigned or sublet the rental unit without landlord's written consent;
- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health safety or lawful right of another occupant or the landlord; and
- put the landlord's property at significant risk.

The landlords testified that tenants have sublet the rental unit as they have a student staying in the lower bedroom and collecting rent. The landlords stated that the tenancy was based on four occupants which were to be the two tenants and their 2 children.

The landlord's witness HR testified that they have 2 bedrooms that they are actively using and one of the bedrooms is directly below the tenants' washer and dryer. HR states there is no sound proofing, and this is a regular home.

HR testified that the problem has been ongoing since the tenants moved in, which is that the washing machine and dryer rattle and vibrate and makes it impossible for them to have a nap or have quiet time during the day in the room of their choice. HR stated that although the tenants agreed that they would not use the washer machine or dryer after 9pm, which they do not 99% of the time; however, sometimes they do, and this disturbs their sleep.

HR testified that there is no insulation to soundproof, and this is the nature of the premises, and it can be expected to hear walking or talking between the units.

HR testified that the washing machine and dryer are being used for the greater part of the day 9am to 9pm, everyday, for at least five hours during this period.. HR stated that they work from home, and they are unable to use the bedroom of their choice.

The landlords testified that the tenants overusing the appliances is commercial use and is unreasonable disturbing the occupant's rights to quiet enjoyment. The landlords stated that the occupant works between 12 to 14 hours a day working from home and typically gets up early.

The landlords testified that the tenants action clogged the dryer vent, and this caused mould in the attic and a booster fan had to be installed. The landlords stated that the appliance repair person has been there five times since the tenancy commenced.

The landlord testified that due to the over usage of the appliances, which vibrates, could cause structural damage to the home and the floor could collapse and the appliances could fall onto the bed of the occupant causing injuries or worse.. This putting the property at significant risk and seriously jeopardizes the safety of the occupant.

The tenants testified that they have a homestay student who is 16 years old and has been living with them since last September 2021, under a home stay program and is part of their family. The tenants testified that their son went away to university and the student is simply staying in their son's room.

The tenants testified that they are a family of four, living at the property and for the first six months the male tenant was away working and home on weekends. The tenants stated they are not running any commercial laundry services. The tenants stated that the female tenant works and may put a load of laundry on before they leave for work and put into the dryer when they come home. That their daughter does one load a week and that they wash their student's clothes approximately every 10 days. The tenants stated it is impossible for the washer and dryer to be going for five hours every day of the week since the tenancy started..

The tenants testified that the dryer was filling with lint; however, that was because of the duct being clogged. The tenants stated when the appliance person was there they said that this must have been a build up over a course of a long period and at that time the appliance repair person did something to the appliance, which took four other people to figure out. This was not due to their actions.

The tenants testified that the landlord on May 6, 2022, sent them an email about renewing the terms of the lease. The email shows that the landlord offered another one-year fixed term tenancy, at a higher rent and wanted them to remove their home stay student.

The tenants testified that they were not prepared to enter into another fixed term as the tenancy automatically reverts to a month-to-month and because they were not necessarily planning to stay living in the premises for another year, and they did not agree to a rent increase proposed by the landlord as it is over the allowable amount, and they were not going to remove the student s they are part of their family.

### Analysis

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

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has not provided sufficient evidence to support the reasons in the Notices.

The tenants have not sublet or assigned the rental unit. The tenants have a homestay student a 16-year-old staying in their son's room while their own son is away at school. Even if the tenants are receiving a small stipend from the school for the child's basic expenses this does not create a sublet agreement. The tenants have not given the child exclusive possession as the tenants are still living in the premises to which they rent. Further, there is nothing in the tenancy agreements that limits the occupants to be only the children of the tenants. I find the landlord has failed to establish that the tenants have assigned or sublet the rental unit.

In this case, I cannot find the tenants have unreasonable disturbed the lower occupant due to the tenants using their washer and dryer which is a normal household noise regardless of use and it appears 99% of the time it is used during reasonable hours. While I accept the appliances may have some vibration; however, I have no evidence to support that this is due to the neglect of the tenants. Further, this is not a soundproof rental unit.

I do not accept the landlord's witness testimony that the washing machine and dryer are running for 5 hours every day of the week as this does not have the ring of truth. The household of the tenants consist of two adults and two children who are gone most of

the day due to work and school, with the exception of summer months. Further, I have no proof that the tenants are using the appliances for commercial purposes, and this was denied by the tenants. At the very least I would expect to see photographs of incoming and outgoing laundry on a regular basis.

While I accept there was an excessive amount of lint in the ducts and this could have been a fire issue, as this is supported by photographs; however, I find it highly unlikely that this was built-up in less than one year. Which it is the landlord's responsibility to clean on a regular basis. I have no evidence from the landlord to prove when the duct to the dryer vent was last professional cleaned or any evidence that the tenants knew it was an issue until a qualified person discovered it.

I find the landlord's position that the tenants have put the property at significant risk and the health and safety of another occupant when they indicated that this is because the overuse of the appliances could fall through the floor from vibration and injure the occupant. This is not rational and is a significant exaggeration. An appliance just does not fall through a floor if the premises is built to standard building codes required by law.

Further, I question the credibility of the landlord based on the following.

I find if the tenants have been unreasonable disturbing the other occupant since they moved into the rental unit and has put the landlord's property at significant risk by over using the washer and dryer, I find It would be unreasonable for the landlord to be attempting to get the tenants to sign a new fixed tenancy agreement on May 6, 2022, as these issues had to have been known by the landlord at that time. When the tenants did not agree to the terms the landlord issued the Notices on May 20, 2022, and May 30, 2022.

Further, I find the landlord has altered a document that they submitted into evidence, the tenancy agreement.. Both parties have provided a copy of the tenancy agreement for my review.

The tenant's copy shows the following:

day month year

IF YOU CHOOSE C, CHECK AND COMPLETE D OR E

Check ☒ D) At the end of this time, the tenancy will continue on a month-to-month basis, or another fixed length of time, unless the tenant gives notice to end tenancy at least one clear month before the end of the term.

☐ E) At the end of this time, the tenancy is ended and the tenant must vacate the rental unit.  
This requirement is only permitted in circumstances prescribed under section 13.1 of the Residential Tenancy Regulation, or if this is a sublease agreement as defined in the Act.

Reason tenant must vacate (required): \_\_\_\_\_

Residential Tenancy Regulation section number (if applicable): \_\_\_\_\_

\* If you choose E, both the landlord and tenant must initial here

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The tenant must move out on or before the last day of the tenancy.

Landlord's Initials	Tenant's Initials
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The landlord's copy shows the following:

day month year

IF YOU CHOOSE C, CHECK AND COMPLETE D OR E

Check ☒ D) At the end of this time, the tenancy will continue ~~on a month-to-month basis~~ Based on 2 or another fixed length of time, unless the tenant gives notice to end tenancy at least ~~one~~ clear month before the end of the term. (K.A.)

☐ E) At the end of this time, the tenancy is ended and the tenant must vacate the rental unit.  
This requirement is only permitted in circumstances prescribed under section 13.1 of the Residential Tenancy Regulation, or if this is a sublease agreement as defined in the Act.

Reason tenant must vacate (required): \_\_\_\_\_

Residential Tenancy Regulation section number (if applicable): \_\_\_\_\_

\* If you choose E, both the landlord and tenant must initial here

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The tenant must move out on or before the last day of the tenancy.

3. RENT (please fill in the information in the spaces provided)

a) Payment of Rent: \_\_\_\_\_

☐ Additional information: 50% of Water, Sewage, Recycling, scrap collection, and Garbage paid annually by tenant.

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The difference between the two tenancy agreements is the landlord has altered their copy of the tenancy agreement by crossing off that the tenancy will continue "on a month to month" and writes on the agreement "based on" another fixed term length. The landlord has also crossed off the word "one" and inserted "2" changing the tenants' requirements to end the tenancy.

The landlord initialled this change, not the tenants. This change was made in blue ink, not the black ink that was used for the entire agreement including signatures. The blue ink was also used at the bottom of the page to mark the page number of the exhibit.

When a document is altered after it has been signed this is a serious offense, especially when used as evidence at a hearing. This is falsifying a document for an intended purpose, which is to mislead this hearing as a result I find the landlord's evidence not credible and the evidence unreliable.

I find it more likely than not that the landlord issued the Notices in retaliation because the tenants did not agree to enter into another one-year fixed term agreement, which is their rights as their fixed term would automatically revert to a month-to-month, did not agree to pay a higher rent above the allowable amount, and did not agree to remove the student.

Based on the above, I grant the tenants' application and cancel the Notices that are before me. The tenancy will continue until legally ended in accordance with the Act.

Since the tenants were successful with each of their applications, I find the tenants are entitled to recover the cost of the filing fees. I authorize the tenants a onetime rent reduction of \$200.00 from a future rent payable to the landlord to recover this award.

### Conclusion

The tenants' applications to cancel the Notices is granted. The tenancy will continue until legally ended. The tenants are authorized a onetime rent reduction of \$200.00 from a future rent payable to the landlord to recover the cost of the filing fee.

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: September 14, 2022

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Residential Tenancy Branch