



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE REALTY  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNC

### 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.

Both named tenants and an agent for the landlord attended the hearing, and one of the tenants and the landlords' agent each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

At the outset of the hearing the parties agreed that all evidence had been exchanged, however during the hearing the tenant testified that some of the landlords' evidence that was referred to was not received by the tenants. The landlords' agent submitted that the additional evidence was sent by registered mail on April 13, 2023 and has provided a copy of a Canada Post cash register receipt bearing that date, and I found that all evidence had been provided to the tenants in accordance with the law.

All evidence of the parties has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause dated January 13, 2023 was given in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The landlords' agent** testified that this month-to-month tenancy began on August 1, 2021 and the tenants still reside in the rental unit. Rent in the amount of \$1,400.00 was payable on the 1<sup>st</sup> day of each month, which was increased to \$1,421.00 per month effective December 1, 2022; and there are no rental arrears. On August 1, 2021 the

landlords collected a security deposit from the tenants in the amount of \$700.00 as well as a pet damage deposit in the amount of \$700.00, both of which are still held in trust by the landlords. The rental unit is a lower suite in a house. The upper suite was tenanted, however that tenant vacated at the end of February, 2023 and the landlords have not re-rented because the landlords want to sell. A copy of the tenancy agreement has been provided for this hearing, which includes an Addendum.

The landlords' agent further testified that on January 13, 2023 the landlord's agent served the tenants with a One Month Notice to End Tenancy for Cause by personally handing it to one of the tenants. A copy has been provided for this hearing and it is dated January 13, 2023 and contains an effective date of vacancy of February 28, 2023. The reasons for issuing it state:

- Tenant is repeatedly late paying rent;
- Tenant has not done required repairs of damage to the unit/site/property/park;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

With respect to repeated late rent, the landlords have provided a copy of a statement, which the landlord testified that the entries highlighted are the late rent payments. They are March 7, 2022; April 7, 2022; May 2, 2022; July 5, 2022; September 9, 2022; October 4, 2022; November 4, 2022; December 8, 2022; and January 6, 2023. The landlords' agent was not a manager during that time, and is not sure why a notice to end the tenancy wasn't issued prior. The agent took over management in December and started to reach out to the tenants who have had many chances.

On February 2, 2023 the landlord's agent issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and a copy has been provided for this hearing. It is dated February 2, 2023 and contains an effective date of vacancy of February 14, 2023 for unpaid rent in the amount of 1,458.59 that was due on February 1, 2023. The landlords' agent was not able to indicate why that amount may have been outstanding, but testified that it was on the system. The tenant statement only runs from March 1, 2022 to January 1, 2023. The landlords' agent testified that the tenants paid \$1,465.00 on February 3, 2023.

With respect to the next reason for issuing the Notice, several interim inspections were completed prior to the landlords' agent becoming the property manager. On August 19, 2022 an interim inspection was completed during which the entrance was seen to be "poor," as well as the kitchen and living room. On October 21, 2022 there were concerns, and an Interim Property Inspection Report was completed, a copy of which

has been provided for this hearing. It indicates that there was a hole in a wall by the door, the dishwasher did not work, nor an electric baseboard heater or oven. The bathroom was in poor condition and tub needed caulking and a bedroom was in very poor shape, full of stuff and "could not see anything." The landlord's agent also testified that there's a large travel trailer in the yard, which is a complete mess as well as a white truck without insurance and not running.

Another agent for the landlord followed up about the Interim Inspection and directed the landlord's agent to replace and ensure smoke detectors operate properly; to let the tenants know that there is no agreement or understanding that yard work is to be done, and all work on the exterior is to stop immediately; that there is no documentation that gave permission to have the travel trailer on the property and was to be removed; maintenance work on a vehicle cannot be done on the property, remove the white truck and all vehicles must be registered and insured; no hoarding of any kind on the property, and that the amount of items that accumulate is to be kept to a minimum. The email also deals with the dishwasher and stove, and requests a revisit to the property the week of November 21, 2022. A handwritten note states that did not transpire and an email was sent December 2, 2022.

An email was sent to the tenants dated October 31, 2022. Photographs have been provided for this hearing. The landlord testified that the inside of the rental unit was dirty and not in very good condition. The main part was the condition of the exterior and late rent payments.

With respect to a breach of a material term of the tenancy agreement, the landlord testified that a letter was provided to the tenants which refers to late rent and indicates that the condition of the previous interim inspection showed an unacceptable condition.

Another Interim Inspection Report has been provided for this hearing dated January 13, 2023 which shows that the entry was very dirty, walls damaged, the living room flooring was very dirty, the kitchen and bathroom were in fair condition.

The tenants have been aware since the beginning about the yard concerns of the landlord, which has been ongoing. The tenant in the upper unit approached the landlord about concerns of the condition of the yard, which is one of the reasons that that tenant vacated. Further, the letter from that tenant, and another, which have been provided by the tenants as evidence for this hearing were not written by the previous tenants as indicated.

The landlords have also provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 7, 2023 and effective February 21, 2023 for unpaid rent in the amount of \$467.00 that was due on February 1, 2021, but the landlords' agent does not know when or how it may have been served.

**The tenant** testified that the tenants moved in on September 1, 2021, not August 1, 2021 because the previous tenant didn't move out on time and had a child, so the tenancy didn't begin until September.

The tenant had been staying in a camper in the yard in March, 2021. Another person (JB) was staying with the landlords and the landlord said that in order for the tenants to move into the suite, they had to take JB as a roommate.

The Addendum to the tenancy agreement signed by the tenants was typewritten, and the one provided for this hearing has hand-written text which was not on the document when the tenants signed it. The handwritten portion states: "8. Sublet bedroom for 1/3 rent & utilities to JB," and it contains the signature of that tenant (JB). It also states, in handwriting, "Sublet permitted," however another version provided for this hearing states, "9. No other sublet permitted." The landlord required the tenants to accept JB as a roommate.

One of the letters from previous tenants worked for the landlord and they were friends. He is the tenant that was added to the Addendum. Then the landlord threatened to kick him out. Just before he moved out the tenants had to cover the rent and hydro; he never paid on time. He drank constantly, was rude, and part way through the month he moved out. Hydro was in his name so the tenant had to change that and pay the bill. The tenants also had to pay a \$500.00 deposit for hydro. The letter provided for this hearing from JB was written for a prior hearing, and the parties had a falling out. One of the dogs was his, but he wasn't taking care of it and he told the landlord that everything was the tenants' fault, and the landlord wouldn't talk or listen to the tenants, but was very verbally abusive.

It's impossible to find another place to live. The tenant is in crisis care and should not be evicted for something they didn't know about.

There is no storage on the property, and the landlord authorized the tenants to build a shed. When the landlord came for an inspection on January 13, 2023, photographs were taken by the tenant and have been provided for this hearing. There's only patio furniture there.

The yard floods, and the landlords knew that, and the tenants got the dogs from the landlord.

The truck runs and is insured. There is no damage inside the rental unit; the tenant has fixed things from previous tenants, and the yard continues to flood.

The tenant also denies the testimony of the landlord's agent that the letters written and provided by the tenant for this hearing were not written by the writers, and refers to text messaging from the writer and the tenant as proof that the person agreed to provide a letter for this hearing.

The flooding continues into the house, and the tenant tried to fix it.

The tenant has not seen any paperwork about a rent increase.

### Analysis

Firstly, with respect to repeated late rent, that matter has been dealt with in the Supreme Court of British Columbia on Judicial Review. The Court stated that ending a tenancy is a significant request only in accordance with the *Residential Tenancy Act*, and if disputed, an Arbitrator is required to consider the totality of the evidence. The Court also mentioned Policy Guideline 38 – Repeated Late Payment of Rent, which must be considered but would be a legal failure by an Arbitrator to properly consider the statutory interpretation of Section 47 without considering the entire circumstances given the context in which Section 47 (1)(b) finds itself. The Court also stated that an Arbitrator is to consider that the context of Section 47 is serious enough to warrant eviction, and an Arbitrator is to consider 4 things:

1. the frequency of the defaults in the context of the length of the tenancy;
2. the length of default;
3. the content and communication between the parties in respect of any of the defaults; and
4. the expectations of the parties.

The Supreme Court also found that by not considering estoppel, the Arbitrator committed an error. It also stated that “The distinction between waiver and estoppel is vital because the landlord relies on alleged defaults that occurred before she gave any indication that the required strict compliance with the requirement to pay rent on the first of the month.” Such a notice would have had to be clear. The landlord was required to give the tenant

reasonable notice that strict compliance would be enforced before taking steps to end the tenancy for late payments, and in that case, no such notice was provided to the tenants.

In this case, I have reviewed the tenant statement which shows that 9 late rent payments were made from March 2022 to January 2023. The minimum number of late payments to be considered repeatedly late is 3, and in this case the third was in May 2022. The only indications of communication between the landlord and the tenants was an email in October, 2022 after the new property manager started. In the circumstances, I find that the landlord was estopped from ending the tenancy for repeated late rent by allowing the continued late payments without concern.

A landlord may not require a tenant to agree to another person as a roommate, cannot change a term of a tenancy agreement without the consent of the tenant, and cannot require a tenant to pay the full rent when the Addendum states that the roommate pays 1/3. It is not up to the tenants to collect the rent from another person. It is also concerning that the Addendum was obviously changed, on more than 1 occasion, and I accept the tenant's testimony that the tenant did not make those changes or agree to them.

With respect to the second reason for issuing the Notice: Tenant has not done required repairs of damage to the unit/site/property/park, I have reviewed the photographs and inspection reports. The landlord provided the tenants with a letter on December 10, 2021 regarding notice of a breach of the tenancy agreement, which states that, "The yard has to be free of all hoard by Saturday, December 18, 2021. If it does not fit in the house or in your trailer, it goes off the property. That includes all the stuff you have stashed around, under or behind the trailer, whether it is tarped or not. If you do not comply with this notice, it will result in the above stated 30 day eviction notice."

I also note that the inspection reports show that the interior of the rental unit has been very dirty, however it wasn't until December 2, 2022 that the landlords' agent wrote to the tenant asking to discuss the condition of the rental unit when the last interim inspection was completed, and that the condition was unacceptable. It also states that it would be a good idea to discuss it ASAP so the tenant is aware of what is expected. But there is no evidence that that happened.

The landlords' agent did not agree during the hearing that the photographs of the exterior of the rental unit provided by the tenant were a true likeness of the yard when it was inspected. I have reviewed all of the photographs, which show large amounts of puddling and flooding and mud throughout the yard. I also note that the letter provided by the previous tenant from upstairs (HS) indicates that the back yard is clear for the most part,

and that the tenant had taken things out of the trailer while working on it when the photographs of the landlord were taken.

Given that the landlords have not continued to follow-up with the tenant about the number of items in the yard from December 2021 to December 2022, but only notes about the cleanliness inside the rental unit, and considering the landlord intends to sell, I find that on a balance of probabilities that is the intent. The amount of mud in the yard itself is more detrimental to the esthetics than the items kept by the tenants, in my opinion.

In order to end a tenancy for breach of a material term of the tenancy agreement, the landlord must notify the tenant of the breach in writing, and advise the tenant in writing that if the breach was not corrected by a specific date the landlord will end the tenancy. The evidence shows that landlord did that in December, 2021, but the Notice wasn't issued until January 13, 2023, more than a year later.

In the circumstances and considering all of the evidence, I am not satisfied that the landlord has established the reasons for ending the tenancy and I cancel the Notice.

Pursuant to my authority under Section 62 of the *Residential Tenancy Act*, I order the tenant to pay rent in full when it is due, and to comply with the *Act* by maintaining reasonable health, cleanliness and sanitary standards throughout the rental unit and property.

Since the tenants have been successful with the application, the tenants are also 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 may reduce rent for a future month by that amount as full recovery, or may serve the order to the landlord and file it 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 13, 2023 is hereby cancelled and the tenancy continues.

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

I order the tenants to pay rent in full when it is due and to comply with the *Act* by maintaining reasonable health, cleanliness and sanitary standards throughout the rental unit and property.

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 07, 2023

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Residential Tenancy Branch