



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

Dispute Codes: CNC, PSF and FF

## Introduction

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions to me.

## Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside; whether the Tenant is entitled to have keys to the garage for the purposes of accessing the fuse box; and whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

## Background

The Landlords and the Tenant agree that the Tenant is required to pay monthly rent of \$800.00 on, or before, the first day of each month.

The Landlords and the Tenant agree that a 1 Month Notice to End Tenancy for Cause was personally served on the Tenant on August 21, 2008, which indicated that the Tenant was required to vacate the rental unit on October 01, 2008. The reason stated for the Notice to End Tenancy was that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, pursuant to section 47(2)(d)(i) of the *Act*.

The Landlords presented the following evidence and arguments to support their argument that the Tenant has significantly interfered with or unreasonably disturbed them:

- The Tenant lives in a rental unit that is located on the same property as their home
- The Tenant has smoked in the rental unit since he moved into the rental unit on December 18, 2007, which is in contravention of their tenancy agreement, although they both admit that they also smoked

inside the rental unit

- The Tenant repeatedly pays his rent late
- The Tenant leaves his lights and television on during the day, which is an unnecessary expense for the Landlords, who pay for electricity
- The female Landlord stopped socializing with the Tenant in his rental unit in February of 2008, due to the fact he made inappropriate comments to her regarding her breasts, hair, and eyes
- The female Landlord stopped socializing with the Tenant in his rental unit in February of 2008, due to the fact he touched her chest, buttocks, and thighs inappropriately
- The female Landlord stated that she asked the Tenant to stop speaking to her and touching her in an inappropriate manner on several occasions, but the behaviour continued when they met on common property
- The Landlords acknowledge that they continued to socialize with the Tenant, including spending a day at a campground with him on August 01, 2008 and inviting him to a party in their yard in June of 2008
- The Tenant leaves his garbage in the garage instead of placing it in the garbage area
- The Tenant has, on one occasion, not replaced the cover on the pool after using it
- The Tenant leaves his chairs and beer cans in the common yard two or three times per month
- On June 28, 2008 the Tenant was invited to a party hosted by the Landlords, but was advised that he should bring his own alcohol and leave his dog in his rental unit. He brought his dog to the party, was visibly impaired, drank the Landlords' beer, disrupted the party by playing his music loudly, and used the washroom instead of the port-a-potty, in spite of the posted notice to not use the washroom
- The Tenant gave away a cat that belonged to the Landlords, after being repeatedly advised by both Landlords that they did not want the cat to be given away
- The male Landlord acknowledged having a conversation with the Tenant about cats going "MIA", but he states that he meant that the kitten may get killed by a predator
- After being denied a key to the workshop, the Tenant repeatedly phoned the Landlords but did not leave a message
- On August 21, 2008 the Tenant left two messages for the Landlords, a transcript of which was submitted in evidence, which were clearly abusive and inappropriate
- The female Landlord is afraid of the Tenant, as she finds him aggressive and unapproachable

- The Tenants keep their windows and doors locked and they do not leave their home without a golf club, due to their fear of the Tenant

The Tenant presented the following evidence and arguments in support of the application to cancel the Notice to End Tenancy for Cause:

- The Tenant agrees that he smoked in his rental unit, but he argues that the smoking did not unreasonably disturb the Landlords, as they also smoked inside his rental unit
- The Tenant acknowledged that he leaves his lights and television on occasionally, but he denies leaving them on for extended periods of time
- The Tenant acknowledged that he once made a comment about the female Landlord's eyes, but he denied making other inappropriate sexual comments to her
- The Tenant denied ever touching the female Landlord inappropriately, stating that he was never alone with her
- The Tenant stated that he was never asked to stop making inappropriate comments to the female Landlord
- The Tenant stated that the three of them continued to socialize at the common property of the residential complex, and that they went camping together as recently as August 01, 2008
- The Tenant stated that he did leave his bagged garbage in the garage, until the Landlord purchased two garbage bins in May, which is where he now places his garbage
- The Tenant acknowledged that he leaves a few beer cans in the yard after he has spent time in the yard with the Landlords, although he states it is not unreasonably untidy
- The Tenant stated that he did attend the Landlord's party on June 28, 2008, but he was not told to leave his dog inside and he only played his music loudly in his rental unit after reaching an agreement with the Landlord to play the same radio channel on his radio in an effort to enhance the volume
- The Tenant agreed that he did give a kitten belonging to the Landlords away, primarily because the kitten kept entering his rental unit
- The acknowledged that the Landlords told him not to give away the kitten but during one conversation that he had with the male Tenant, the male Tenant stated that cats sometimes go "MIA". The Tenant interpreted this to mean that the Tenant could give away the cat
- The Tenant acknowledged that he left two inappropriate messages on the Landlord's answering machine on August 21, 2008, however he stated that these were left the day he received the Notice to End

- Tenancy, and can not be considered grounds for ending this tenancy
- The Tenant stated that the male Landlord also left an inappropriate message on his answering machine on August 21, 2008, in which he threatened to physically harm the Tenant

The Tenant asked to be provided with keys to the workshop so that he can access the fuse box if there is an emergency. The Landlords stated they do not wish to provide keys to the Tenant as the Tenant can contact them by cell phone if there is an emergency and they are not home. The Landlords also stated that they identify someone as an emergency contact if they are out of town.

### Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the Landlord has provided insufficient evidence to show that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. In reaching this conclusion I considered the following factors:

- Many of the concerns raised by the Landlord relate to a troubled friendship, rather than a failed tenancy arrangement
- Issues relating to the Tenant drinking the Landlord's beer at a party, bringing his dog to parties, and using the incorrect washroom at the parties can be easily resolved by not inviting the Tenant to future social engagements
- I am not satisfied that leaving the cover off the pool on one occasion constitutes an unreasonable disturbance or a significant interference
- In the absence of photographic evidence or other evidence that demonstrates the severity of the problem, I am not satisfied that leaving chairs and beer cans in the yard, after spending time in the yard with the Landlords, constitutes an unreasonable disturbance or a significant interference
- In the absence of photographic evidence or other evidence that demonstrates the severity of the problem, I am not satisfied that leaving bagged garbage in the garage on occasion constitutes an unreasonable disturbance or a significant interference
- Although repeatedly paying rent late may be grounds to end a tenancy pursuant to section 47(1)(b) of the Act, the Landlords have not attempted to end the tenancy pursuant to this section
- Although continuing to smoke inside the rental unit **after being given written notice to stop** may be grounds to end a tenancy pursuant to section 47(1)(h) of the Act, the Landlords have not attempted to end the tenancy pursuant to this section
- The Landlords submitted insufficient evidence to establish that smoking in the rental unit is an unreasonable disturbance, considering that they also

smoked in the rental unit

- The Landlords have submitted insufficient evidence to establish that the Tenant has incurred unreasonable utility expenses by leaving his lights and television on, nor have they established that this has caused an unreasonable disturbance or a significant interference
- Although making inappropriate sexual comments or physical comment could be grounds to end a tenancy in many situations, I am not satisfied it is appropriate in these circumstances. The Landlords contend that the Tenant's behaviour is inappropriate enough to end a tenancy, yet they continued to socialize with the Tenant as recently as June of 2008, when they invited him to a birthday party for the female Landlord's mother, and on August 01, 2008, when they spent the day with him at a campground. I find it improbable that the Landlords would willingly spend time with the Tenant if his behaviour was disturbing enough to end a tenancy
- I do not find the female Tenant's statements that she is frightened of the Tenant and that they do not leave their home without a golf club to be credible, given her admission that she continued to socialize with him in June and August
- Although the phone messages left by the Tenant on August 21, 2008 could be grounds to end a tenancy if they continue, they are not indicative of a pattern of behaviour exhibited by the Tenant prior to the service of the Notice to End Tenancy. As the messages were left after the Notice was served, I do not find that they form part of the grounds for serving the Notice to End Tenancy
- I note that the Landlord left an equally inappropriate telephone message for the Tenant on August 21, 2008.

In determining whether this tenancy should end, I gave extensive consideration to the fact that the Tenant gave away a cat belonging to the Landlords. Although this act was entirely inappropriate, and may be grounds to seek a financial remedy, I am not satisfied it is grounds to end a tenancy pursuant to section 47(d)(i). In reaching this conclusion I was influenced by the fact that it was an isolated incident that is not likely to be repeated; that it does not appear to have been done out of malice; and that it arose out of a miscommunication with the male Landlord, whom the Tenant believed had given him permission to give away the cat without informing the female Landlord of why the cat was missing.

I find that the Tenant has submitted insufficient evidence to establish that he needs a key to the workshop for the purposes of accessing the fuse box. I find that the Tenant can contact the Landlords by telephone in the event that there is an urgent need to access the fuse box. I also find that the Landlords have made reasonable arrangements to have someone act as their agent in an emergency if they are out of town.

### Conclusion

As I have determined that the Landlords have submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47(2)(d)(i) of the Act, I hereby set aside the One Month Notice to End Tenancy, dated August 21, 2008, and I order that this tenancy continue until it is ended in accordance with the *Act*.

As I found that that it is not necessary for the Tenant to have keys to the workshop, I hereby dismiss the Tenant's application for a key to this area.

As I find the Tenant's application has merit, I hereby authorize the Tenant to deduct \$50.00 from his next rent payment, as compensation for the filing fee he paid for this Application for Dispute Resolution.

Date of Decision: September 22, 2008

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