



# Dispute Resolution Services

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

## Decision

Dispute Codes: CNC, O, FF

### Introduction

This hearing dealt with the tenant's application to cancel a *1 Month Notice to End Tenancy for Cause* (the Notice) and recovery of the filing fee. Both parties appeared at the hearing and had an opportunity to be heard and respond to submissions and testimony provided by the other party, including their witnesses. The landlord was represented by the A/President of the non-profit housing society landlord and the general manager throughout the hearing and the landlord called four witnesses during the hearing.

### Issue(s) to be Decided

1. Whether the landlord has grounds under the Act, regulation or tenancy agreement to end the tenancy.
2. Award of the filing fee.

### Background and Evidence

From the evidence presented to me, I make the following relevant findings concerning the tenancy and rental unit. The rental unit is located in a residential complex that provides rental accommodation to senior citizens. The residential property is operated by a non-profit housing society. The tenant is an 80 year old man who has been residing in the rental unit since May 1993. The tenant's son visits the tenant nearly every day and often stays for several hours per day. The rental unit and other rental units at the residential property are accessed by a common walkway that passes in front

of the rental units. The rental unit has a private patio at the rear of the rental unit for the exclusive use of the tenant.

On September 29, 2008 the landlord served a *1 Month Notice to End Tenancy for Cause* upon the tenant. The Notice has an effective date of October 31, 2008 and indicates the reasons for ending the tenancy are 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, and
  - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and,
- 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, and
  - Jeopardized a lawful right or interest of another occupant or the landlord.

The landlord testified that the residential property is undergoing extensive renovations costing approximately \$600,000. The tenant's son has approached two contractors working on the renovation project on a number of occasions with allegations that the general manager of the residential property had stabbed the tires of a vehicle belonging to another contractor. Two contractors appeared at witnesses for the landlord to confirm the landlord's testimony. The contractors testified that the tenant's son would talk to them about these allegations and take up approximately an hour of their time and that the allegations caused the contractors uncertainty about working on the project and that the project is now behind schedule.

The landlord brought forward a witness who is a female resident at the property who testified that the tenant's son had made an inappropriate comment towards her that she found very offensive; that the tenant's son installed a camera on the exterior of the building which the witness found highly inappropriate seeing as the tenant's son has no right to do that; that the tenant and the tenant's son often gather on the common walkway making it difficult for people with disabilities to pass by; and, that the tenant and the tenant's son play extremely loud music. The witness did acknowledge that the volume of the music has toned down lately.

The landlord brought forward another witness who attested to the loud music coming from the rental unit which he found to be very disturbing and the witness claims that the tenant and the tenant's guest have been gathering on the common walkway acting drunk and blocking people from passing by. The witness testified that the loud music has decreased in recent weeks.

The general manager testified that the landlord's lawful right has been jeopardized by the tenant and his son by delaying the major renovation project at the property. This was done by the tenant's son interfering with the contractors hired to do the renovation project and by the tenant and/or his son spreading rumours to other tenants about the general manager. The rumours caused a great amount of fear and anxiety amongst the other tenants who in turn complained to the manager about what they had heard, thus taking the general manager's time away from managing the renovation project.

The landlord clarified that the illegal activity engaged by the tenant is the drinking on the common walkway in front of the rental unit.

The landlord also testified that the tenant and his son were invited to attend the non-profit society's board meeting prior to the Notice being issued; however, the tenant and

his son did not attend. With written complaints from other tenants in front of the board, the board made the decision to issue the Notice.

The tenant's son was permitted the opportunity to respond to the landlord's testimony and the testimony of the landlord's witnesses. The tenant's son admitted to talking to the contractors but claims the contractors were appreciative of the information he had to offer about the general manager. The tenant's son cannot understand how occasionally speaking to the contractors has delayed progress of the project as much as four weeks, as claimed by the landlord. The tenant's son contends that a police report has been filed by the tenant and/or the tenant's son with respect to the damage allegedly caused to the tires of the contractor by the manager.

The tenant's son admitted to talking to other tenants about other alleged actions of the general manager towards other tenants and not having first hand knowledge of the situation before describing the events to those other tenants.

With respect to the landlord's female witness, the tenant's son admitted speaking to her but denies that his comments were intended to be offensive. The tenant's son admitted to installing a camera on the corner of the building but claims that it was installed for vehicle security purposes and that it was up for only four days.

The tenant's son admitted that he and/or his father sit and drink alcohol on the common walkway but disputed that it is an illegal activity. The tenant's son testified that if people need to get by on the walkway, he and his father and any of their guests move out of the way of people that need to pass by. The tenant's son did not believe the music was played too loud to disturb other tenants.

As evidence the tenant provided letters from some of the other occupants who had complained to the landlord about the tenant. The evidence indicates that the

complainants were regretful that their complaints have caused the tenant to receive a Notice to End Tenancy.

### Analysis

With respect to the walkway in front of the rental unit, it is clear to me that this is common property, as defined in the Act. A tenant has the right to use common property “for reasonable and lawful purposes” pursuant to section 28 of the Act. I do not have sufficient evidence to find that the tenant’s activity on the walkway is illegal; therefore, I do not uphold the reason indicated on the Notice that the tenant has engaged in illegal activity. I find the witness’ testimony credible that the other tenants are intimidated or reluctant or find it difficult to pass by the tenant’s rental unit using the walkway when there is a gathering on the walkway, especially when people are drinking. Since the walkway is used by other tenants, guests, contractors and any other person that needs to access the residential property, I find that it is unreasonable for the tenant, and any guest of the tenant, to gather socially and drink alcohol on the walkway. **As the tenant is not permitted to use the walkway for any unreasonable purpose, I hereby ORDER the tenant, and any person permitted on the property by the tenant, to refrain from social gatherings and drinking alcohol on the common walkway.** This ORDER is binding upon the tenant and if the tenant fails to abide by the ORDER, the landlord may issue a Notice to End Tenancy for non-compliance with this ORDER.

With respect to the loud music, I find it more likely than not that the tenant has reduced the volume of the music of late. Since the tenant appears to have taken corrective action I do not find the music to be grounds to end the tenancy at this point. **However, the tenant is strongly cautioned that future instances of loud music may be grounds for the landlord to take corrective action against the tenant.**

With respect to allegations against the tenant’s son with respect to an inappropriate comment to another tenant and installing a camera on the property, I agree with the landlord that this behaviour is entirely not acceptable or permissible and that this

behaviour is disturbing to other tenants. However, considering that the camera was up for only four days and I heard of only one instance of an inappropriate comment, I do not find that the other tenants were significantly interfered with or unreasonably disturbed, as required by the Act to end a tenancy. It is important to point out that grounds for ending the tenancy for cause require that there be significant interference or unreasonable disturbance and I find the actions of the tenant's son did not quite meet the threshold of being significant. When several people occupy a residential property there is bound to be some level of interference or disturbance. The Act requires there be significant interference or unreasonable disturbance in order to justify ending a tenancy. Otherwise, the slightest interference could be grounds for ending a tenancy. Clearly, this is not what the legislature intended. To be considered significant, I would need evidence that the offensive behaviour was either frequently reoccurring or so disturbing that the person committing the offense would know or ought to have known they were significantly disturbing another person. Therefore, I do not find the installation of the camera or the one inappropriate comment of the tenant's son to be grounds for ending the tenancy. However, the tenant is cautioned that the tenant is responsible for the actions of any person they permit on the property and that continued or recurring disturbing behaviour by the tenant's son may be grounds to end the tenancy.

The tenant's son was cautioned of the negative impact that rumours and gossip have on other tenants' ability to quietly enjoy their rental units at the residential property where their anxiety and fears are raised. The tenant's son appeared to understand the impact his statements about the general manager may have had on other tenants and I was satisfied that this caution sufficiently resolves this matter.

Finally, with respect to the landlord's claims that the renovation project is behind schedule by about four weeks because of the actions of the tenant and the tenant's son, I cannot reconcile the landlord's claims to the evidence before me. While I accept that

approaching the contractors causes delays, I heard that the tenant's son approached each contractor that appeared before me on a few occasions. I also accept that the general manager had to field concerns and complaints from other tenants as a result of the tenant and the tenant's son making allegations against the general manager to other tenants; however, I find that one of the anticipated roles of a general manager is to respond to various complaints or concerns from tenant. Essentially, I accept that the general manager's time and productivity of some of the contractors was negatively affected by the tenant or the tenant's son approaching the contractors and other tenants; however, I cannot reasonably conclude that the interference was so significant as to delay the construction project four weeks as alleged by the landlord. Therefore, I do not conclude that the landlord's lawful rights were seriously jeopardized in order to warrant an end to this tenancy. Again, the Act requires that the tenant seriously jeopardized the landlord's lawful rights. I did not find sufficient evidence to conclude that the landlord's rights were seriously jeopardized.

**As I am satisfied that the contractors find it disruptive when the tenant's son approaches them about allegations against the general manager, I ORDER the tenant or the tenant's son to refrain from communicating with the landlord's contractors while they are working on the residential property.** Non-compliance with this ORDER may be grounds for the landlord to end the tenancy.

In light of the above findings, I set aside and cancel the Notice with the effect that this tenancy shall continue.

I award the tenant recover of one-half of the filing fee, or \$25.00. The tenant may reduce a subsequent month's rent by \$25.00 in satisfaction of this award. Or, the landlord may directly compensate the tenant \$25.00 within 30 days of the date of this decision.

### Conclusion

The Notice to End Tenancy is set aside and cancelled with the affect that this tenancy continues. Two ORDERS have been issued to the tenant and/or the tenant's son with this decision. The tenant may recover one-half of the filing fee from the landlord.

November 5, 2008

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Date of Decision