



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's application to cancel a *1 Month Notice to End Tenancy for Cause*. Both parties appeared at the hearing and were provided the opportunity to be heard and respond to the other party's submissions.

### Issues(s) to be Decided

Has the landlord shown that there is a basis to end the tenancy for the reasons indicated on the Notice to End Tenancy?

### Background and Evidence

Upon hearing undisputed testimony, I make the following findings concerning the tenancy. The month-to-month tenancy commenced November 14, 2008. The tenant and his family occupy the basement suite in the residential property. The tenant is required to pay rent of \$750.00 on the 15<sup>th</sup> day of every month. There is no written tenancy agreement. In January 2009 the landlord verbally requested the tenant to vacate the rental unit. On January 22, 2009 the landlord's daughter drafted a letter requiring the tenants to vacate the rental unit by February 15, 2009. On February 27, 2009 the landlord personally served the tenant with a *1 Month Notice to End Tenancy for Cause* (the Notice). The Notice has an effective date of April 1, 2009 and indicates the reasons for ending the tenancy are that the tenant:

- Is repeatedly late paying rent,
- Significantly interfered with or unreasonably disturbed another occupant or the landlord,

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- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord,
- Put the landlord's property at significant risk, and
- Has engaged in illegal activity that has is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord described the reasons for issuing the Notice as:

1. The tenant's behaviour has been aggressive and threatening on a couple of occasions.
2. The sundeck needs repair from damage caused by heavy snowfall this past winter. The removal of the tenant's car from the garage during the repairs is necessary and access to the basement suite will be restricted.
3. The tenant leaves his children unattended, the children create a lot of noise that disturbs the landlord and the landlord fears the children will cause a fire from cooking. The smoke alarm has sounded a few times.
4. The tenant does not take his garbage to the curb.
5. The tenant's vehicle leaks oil on the garage floor.
6. The tenant paid rent late a couple of times; however, the landlord issued the tenant receipts dated for the 15<sup>th</sup> at the insistence of the tenant.

The landlord submitted that she suffers from health conditions that are affected by increased stress. The landlord's main issues were with the tenant's aggressive behaviour and the unattended children.

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The tenant disputed the landlord's allegations. The tenant testified that it is the landlord or the landlord's family that has acted aggressively towards him because he has complained about lack of heat and hot water and refused to vacate the rental unit without proper notice or reasons. The tenant is agreeable to moving his vehicle out of the garage in order to accommodate the landlord's need to repair the sundeck. The tenant testified that his children are at school or in the care of their mother or himself. The tenant claims the smoke alarm sounded a couple of times from cooking Indian food and not because of the children. The tenant places his garbage in the garbage can but is unaware of an obligation to take the garbage to the street. The tenant claims that he paid his rent on the 14<sup>th</sup> of the month; however, the landlord issued receipts dated the 15<sup>th</sup>.

Both parties acknowledged that the children have been acting much more quietly lately.

As evidence for the hearing, I was provided written submissions by both parties, as well as the Notice to End Tenancy and the letter dated January 22, 2009 requiring the tenant to vacate. I was also provided photographs of the oil leak in the garage and the garbage cans.

## Analysis

A landlord may end a tenancy for cause where the landlord proves that the tenant has given the landlord cause for ending the tenancy as provided under section 47 of the Act. I have considered all of the testimony presented during the hearing and all of the documentary evidence provided for the hearing in order to determine whether the landlord has sufficiently proven that the tenant's conduct warrants the end to this tenancy. As explained to the parties during the hearing, where a landlord has served a Notice to End Tenancy upon a tenant, the onus or burden of proof is on the landlord to prove the allegations made against the tenant on the balance of probabilities. When one

party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the allegations, the landlord has not met the burden of proof.

The landlord may end the tenancy for repeated late payment of rent; however, repeated late payment usually means the tenant has been late at least three times. I do not find evidence that the tenant has paid rent late three times and I reject this as a basis for ending the tenancy. The landlord is encouraged to date the receipts for the date the tenant actually pays rent. In addition, the landlord must not refuse rent. The tenant and landlord agreed that the tenant had attempted to pay rent on April 14, 2009 and the landlord refused it, pending outcome of this hearing. Since the landlord refused to accept the rent on April 14, 2009 the landlord must not consider the rent late for April 2009.

I find the disputed verbal testimony concerning aggressive or threatening behaviour to be insufficient evidence that the tenant has engaged in such behaviour against the landlord. Both the landlord and the tenant are entitled to quiet peaceful enjoyment of their respective units, including freedom from intimidation and harassment. I am of the opinion that the landlord's repeated attempts to have the tenant vacate likely fuelled the hostile feelings between the parties. During the hearing, mutual respect by each party was discussed as well as the requirement for the landlord to conduct herself in accordance with the *Residential Tenancy Act*. I am optimistic that a healthy tenancy relationship may be salvaged if both parties conduct themselves in accordance with the provisions of the Act.

A landlord may not use a Notice to End Tenancy for Cause in order to end a tenancy for a repair to the residential property and the necessary sundeck repair is rejected as a reason for ending the tenancy.

The landlord provided testimony with respect to unattended children that was disputed by the tenant. Children left unattended are not grounds to end a tenancy. Rather, unreasonable disturbance or significant interference is a basis for ending the tenancy. It is not enough to end a tenancy for temporary discomfort or inconvenience caused by a disturbance. A disturbance must be so significant that a reasonable person would know it is unreasonable or that it continues on an on-going or frequent basis. I appreciate that children may make noise when they are playing; however, the parties were in agreement that the children had been quieter lately and the tenant promised to do his best to ensure his children played quietly. The tenant also promised to be more careful in trying not to set the smoke alarm off when cooking. I find that the tenant's promises to respect the landlord's entitlement to quiet enjoyment of her unit to be sufficient resolution to this matter.

Without a written tenancy agreement, I cannot conclude that the tenant is obligated to take the garbage to the street. Therefore, I do not find a violation of the tenancy agreement in this regard and this is not a basis to end the tenancy. I did not find sufficient evidence that the landlord had requested the tenant to clean the oil from the garage floor and protect the garage floor from future oil leakage. The landlord is encouraged to inform the tenant of any breaches of the Act or tenancy agreement in writing and provide the tenant with sufficient time to remedy a situation before issuing a Notice to End Tenancy.

In summary, I find the landlord did not establish a basis or provide sufficient evidence that the tenancy should end for the reasons provided on the Notice to End Tenancy. Therefore, I cancel the Notice with the affect that this tenancy shall continue. The parties are encouraged to make every attempt to negotiate acceptable terms and sign a tenancy agreement that complies with the requirements of the Act.



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## Conclusion

The tenant's application to cancel the Notice to End Tenancy is granted. The Notice to End Tenancy is cancelled and the tenancy continues.

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: April 23, 2009.

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Dispute Resolution Officer