



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes MT, CNC, MNDC, OLC, ERP, RP, PSF, AS, RR, FF

### Introduction

This hearing was scheduled to hear the tenant's application to cancel a *Notice to End Tenancy for Cause*, monetary compensation for damage or loss under the Act, regulations or tenancy agreement, orders for the landlord to comply with the Act, regulations or tenancy agreement, make repairs and emergency repairs, provide services or facilities, allow the tenant to assign or sublet the tenancy, allow the tenants to reduce rent and recover the filing fee from the landlord. Both parties appeared at the hearing and were provided the opportunity to be heard.

The tenants requested the hearing be adjourned to permit them more time to gather evidence with respect to their request for repairs and facilities or services. The tenant's advocate explained that the tenants were unaware of the time limits for gathering and serving evidence. I denied the tenants' request for an adjournment and dismissed their requests for repairs, services or facilities and rent reduction with leave to reapply.

The tenants had requested more time to make this application to cancel the Notice to End Tenancy. The Notice was served in person on April 3, 2009 and the tenants applied to dispute the Notice on April 14, 2009. Since April 13, 2009 was a statutory holiday, the tenants were permitted to dispute the Notice until April 14, 2009. Therefore, there is no need to request more time to dispute the Notice. I proceeded to hear from the parties with respect to the issuance of the Notice to End Tenancy.

## Issues(s) to be Decided

1. Are there grounds to set aside the Notice to End Tenancy?
2. Requirement to pay rent when due.
3. Award of the filing fee.

## Background and Evidence

I heard undisputed testimony that the one year fixed term tenancy commenced in July or August 2008. The tenants are required to pay \$1,200.00 on the 1<sup>st</sup> day of every month. On April 3, 2009 the landlord personally served a *1 Month Notice to End Tenancy for Cause* (the Notice) upon the tenants. The Notice has an effective date of May 31, 2009 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,
- Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlord testified that the Notice was issued because the tenants have lied to the landlord about the tenant's mother, a former tenant herself, returning from Vietnam within three months of the tenancy commencing; the landlord has called the police three times to respond to loud talking and commotion in the rental unit; and, that five or six people are residing in the rental unit when the maximum number of people permitted is three.

Three people ordinarily occupy the rental unit and since April 2009 the tenants have had a guest or occupant reside with them after being released from the hospital. The tenants denied that any other people are residing with them. The tenants

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acknowledged that the tenant's 12 year old son was jumping up and down and talking loudly on one occasion and the police were called by the landlord; however, the tenants contended that the child's noise did not last long. The tenants acknowledge that the police attended the rental unit on two other occasions but explained that one tenant was watching TV and the others were sleeping. The police did not prepare a report and seemed confused as to why they were called.

The tenant's advocate submitted that the tenants are not subletting the unit or assigning the tenancy as they continue to live in the rental unit and have merely permitted a guest or occupant to reside with them since April 2009. The tenants submitted that the tenancy agreement does not specify the maximum number of occupants and that the rental unit is a large house.

The tenant raised the issue of the landlord asking for rent before it is due. The landlord claimed that rent is due on the 1<sup>st</sup> and when it is not paid on the 1<sup>st</sup> he has asked the tenants for the rent. The landlord alleged that the tenants have tried altering the tenancy agreement to reflect the rent is payable on the 7<sup>th</sup> day of the month.

Neither the tenants nor the landlord provided a copy of the Notice to End Tenancy as evidence for the hearing. Rather, I heard testimony as to the dates and content of the Notice. Neither the tenants nor the landlord provided a copy of the tenancy agreement as evidence and I was only provided testimony as to its terms and conditions.

## Analysis

Where a Notice to End Tenancy is in dispute, the onus is upon the landlord to substantiate a basis for ending the tenancy for the reasons given on the Notice. 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 claim,

the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I agree with the position taken by the tenants' advocate that the tenants are not subletting the rental unit, nor have the tenants assigned the tenancy agreement. Permitting an occupant or guest to reside in the rental unit does not constitute a sublet or an assignment. Nor did I find the landlord provided sufficient evidence to conclude that the tenancy agreement prohibits more than three occupants in the rental unit or that there is an excessive number of occupants in the rental unit.

Hearing only disputed verbal testimony concerning the events that took place prior to the second and third police visit, I find the landlord failed to establish the tenants, or persons permitted on the property by the tenants, were significantly interfering with or unreasonably disturbing the landlord. On one occasion there is acknowledgement that the tenant's 12 year old son was being too loud. However, temporary discomfort or inconvenience is not sufficient to find significant interference or unreasonable disturbance. Rather, to find such a reason to end the tenancy I would expect to hear of on-going, frequent or extremely disturbing behaviour. Therefore, I do not find the landlord has met the burden to prove the tenancy must end for unreasonable disturbance or significant interference by the tenants.

Whether the tenant's mother is going to return from Vietnam is of no consequence to this tenancy as the landlord agreed to enter into a tenancy with the named tenants for a term of one year.

In light of the above findings, I find the landlord has not shown sufficient grounds to end the tenancy for the reasons indicated on the Notice to End Tenancy and I cancel the Notice with the effect that this tenancy shall continue. Since the tenants successfully



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disputed the Notice, I award \$50.00 of the filing fee to the tenants. The tenants are permitted to reduce a subsequent month's rent by a one-time deduction of \$50.00 in satisfaction of this award and the landlord must consider the rent paid in full.

Finally, as I heard testimony from the tenant and the landlord that rent is due on the 1<sup>st</sup> day of the month, I find that rent is due on the 1<sup>st</sup> day of the month. Accordingly, the landlord may not request rent earlier than the 1<sup>st</sup> day of the month and the tenants must not pay the rent later than the 1<sup>st</sup> day of the month.

## Conclusion

The Notice to End Tenancy is cancelled with the effect that this tenancy continues. The tenants were awarded \$50.00 towards the filing fee paid to make this application.

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 22, 2009.

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Dispute Resolution Officer