



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes

CNC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel a Notice to End Tenancy for Cause and to recover the filing fee.

The tenant served the landlord by registered Mail on May 08, 2009 with a copy of the Application and Notice of Hearing. The landlord agent confirms they received this. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witnesses, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Has the tenant provided sufficient evidence that the Notice to End Tenancy can be cancelled?
- Is the tenant entitled to recover the cost of filing their application?

### Background and Evidence

This tenancy started on March 01, 2005, Rent is now \$1,188.00 per month payable on the 1<sup>st</sup> of each month. This was a fixed term tenancy ending on February 28, 2006 and it then continued on a month to month basis.

The tenants have filed an application to cancel the landlords Notice to End Tenancy for Cause. The tenants testify that the landlord's allegations in the Notice are baseless.

The landlords gave the tenants a One Month Notice to End tenancy for Cause on May 01, 2009. In this notice the landlords claim the tenants have significantly interfered with or unreasonable disturbed another tenant or the landlord; the tenants have seriously jeopardized the health, safety or lawful right of another occupant or landlord; the tenants have put the landlord's property at significant risk. The tenant has engaged in an illegal activity that has or is likely to damage the landlords' property; adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; jeopardize a lawful right or interest of another occupant or landlord. The tenant has caused extraordinary damage to the rental unit; the tenant has breached a material term of the tenancy agreement that has not been corrected within a reasonable time.

The landlord testifies that the tenant has breached a material term of her tenancy because when she entered the tenancy agreement occupancy was for herself only. The landlord testifies that the tenants' boyfriend has also moved into the unit but despite many attempts to get him to sign a tenancy agreement this has not happened. The tenant has also kept a cat in the unit and the landlord has supplied photos taken in 2007 and 2009 showing the cat on the balcony. The tenants have also breached the tenancy agreement in terms of a conduct clause. Other tenants have made numerous complaints about disturbances from the tenants unit, loud noises, shouting, arguments, banging and screaming. The police have been called and this has caused a major disturbance to other tenants. The landlord called their witnesses to give evidence about the disturbances. The witnesses all confirm the landlords' testimony with disturbances occurring since 2005. The landlords have given the tenants written notice of these and opportunity to stop the disturbances.

The tenant disputes this. The tenants testify that the landlord knew her boyfriend was going to be living at the rental unit from the outset and they had tried to meet with the landlord to amend the tenancy agreement but had not done so to this date. The tenants testify that they only baby-sit the cat and it does not reside at their unit. The tenants testify that although they have caused disturbances in the past it is not frequent and no police action has been taken.

The landlords testify that the tenant has caused damage to the rental unit and despite notices to do so this damage has not been repaired. For example, damages to the balcony and the sink. The tenants have been uncooperative in allowing the landlords or their contractor's access to the rental unit despite being given Notice of entry.

The tenants dispute this they testify that they have made every effort to cooperate with the landlord and there has been occasions when contractors have been due to turn up to complete prearranged work and have not appeared. The tenants testify that they have removed some of the wooden structure that they built on the balcony to shade it from the sun. The remaining structure does not pose any threat to other tenants nor has it damaged the balcony. They testify that the damage to the sink was likely caused by a frozen turkey being dropped in the sink not by a knife as the landlord suggests.

## Analysis

I have reviewed the extensive evidence sent in by both parties. I have reviewed all the evidence given at the hearing and I prefer the evidence of the landlords. The landlords have provided substantial evidence that the tenants have breached material terms of the tenancy by not signing a tenancy agreement when asked to do so. As the tenancy has been in place for a number of years the tenants have had ample opportunity to do this. The evidence suggests that the tenants have been keeping a cat in the rental unit despite a clause in the tenancy agreement stipulating no cats are allowed.

The landlord has provided sufficient evidence concerning the disturbances made by the tenants. This has caused distress and disturbed the quiet enjoyment of the other tenants in surrounding apartments. The tenants' have failed to comply with written compliant letters from the landlord.

I find that the tenants have not always cooperated fully with the landlord in regard to access to the rental unit or in removing the structure built on the balcony as requested by the landlord in writing.

The landlord is unable to conclusively prove that the tenant has engaged in an illegal activity. However, there is enough evidence to uphold the landlords One Month Notice to End the Tenancy and the landlord has requested an Order of Possession.

### Conclusion

I find that the tenant has not established any part of their claim to cancel the Notice to End Tenancy. Therefore, the tenants claim is dismissed without leave to reapply.

I uphold the landlords One Month Notice to End Tenancy for Case and issue an Order of Possession to take effect on or before July 31, 2009.

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: June 11, 2009.

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Dispute Resolution Officer