



# Dispute Resolution Services

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

## Decision

Dispute Codes: MT CNC

## Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause. The tenant, the landlord and a witness for the landlord all participated in the teleconference hearing.

## Preliminary Issue

The tenant also applied for an extension of time to make the application to cancel the notice to end tenancy, as the notice to end tenancy was dated May 27, 2009 and the tenant was not able to make his application to cancel the notice until June 10, 2009. The landlord stated that he served the notice by posting it to the tenant's door on May 27, 2009. The tenant stated that he was not sure of the date he received the notice, but it was at the end of the month. When a notice is served by posting, the tenant is deemed to have received it within 3 days after it is posted. I therefore find that the tenant received the notice on or before May 30, 2009.

The deadline by which the tenant ought to have filed his application to cancel the notice was June 9, 2009. The tenant provided a note dated June 3, 2009, in which he stated that he was entering the hospital that day. The tenant was released from the hospital on June 9, 2009. The landlord was not aware that the tenant had been in the hospital, but he did not dispute the tenant's evidence on this point. I find that the tenant did have a serious and compelling reason for not filing his application on time, and I grant the tenant the extension of time to dispute the notice to end tenancy.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

### Background and Evidence

On May 27, 2009 the landlord served the tenant with a one month notice to end tenancy for cause. The notice indicates that the reason for ending the tenancy is that the tenant has allowed an unreasonable number of occupants in the rental unit. The testimony of the landlord was that the tenant's girlfriend has moved into the rental unit, and the unit was only intended for one occupant. The landlord and the landlord's witness both stated that the tenant and his girlfriend frequently argued and made excessive noise all night long. The landlord acknowledged that there is no written tenancy agreement.

The response of the tenant was that the landlord never said how many occupants could be in the suite, and there is no written tenancy agreement. The tenant's girlfriend is a frequent guest, but she has her own apartment in New Westminster, where she pays rent.

### Analysis

In considering all of the testimony of the parties, I find that the notice to end tenancy is not valid. There was no written tenancy agreement with a clause stating clearly that the unit was only intended for one occupant, and the landlord failed to provide sufficient evidence that the verbal tenancy agreement was based on only one occupant. Further, I am not satisfied that the tenant's girlfriend is in fact an occupant rather than a frequent guest. A landlord may not unreasonably restrict access to the rental unit by a tenant's guest.

Conclusion

The notice to end tenancy is cancelled, with the effect that the tenancy continues.

Dated July 22, 2009.