

# Dispute Resolution Services

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

## **DECISION AND REASONS**

### **Dispute Codes:**

CNC

### **Introduction**

This hearing dealt with an application by the tenants for an order to set aside a notice to end tenancy. Both parties attended the hearing and had opportunity to be heard.

### **Issue(s) to be Decided**

Does the landlord have grounds to end this tenancy?

### **Background and Evidence**

The tenancy began on November 15, 2008. The rental unit is an apartment located in a multi-story apartment building. Two tenants, RL and LB reside in the rental unit. On May 28, 2009, the landlord served the tenants with a one-month notice to end tenancy.

The notice alleges that the tenants have significantly interfered with or unreasonably disturbed another occupant, seriously jeopardized the health and safety of another occupant, put the landlord's property at significant risk and breached a material term of the tenancy agreement.

The landlord testified that he had cause to serve the notice to end tenancy on the tenants for the following reasons:

1. The tenants leave the back door open and unattended several times a day when they go outside to smoke. This compromises the security of the building and on occasion there were unwelcome visitors to the building.
2. The tenants smoke under the windows of the suites that are located above the sidewalk. Smoke enters these suites and causes discomfort and health issues for the occupants.
3. The tenant feeds squirrels and this resulted in squirrels nesting in the attic,

entering suites and chewing cables.

4. The tenant spreads mounds of bird seed along the back fence attracting pigeons and other birds of prey. Some tenants witnessed a hawk attacking and killing pigeons and were traumatized by this experience.
5. The tenants have loud verbal altercations which disturb the other tenants.
6. The tenant got into an argument with another tenant over the issue of the other tenant walking her pet past the tenant's window.
7. The tenant caused a grease fire in her suite and took the smoking pan outside, which triggered the fire alarm and resulted in a visit from the fire department.
8. The tenant owes for the rent of a storage locker.

The landlord sent a letter addressing some of the above issues to all the tenants of the complex in April 2009. The landlord has filed a copy of this letter along with three letters of complaint against the tenants from the other occupants of the building. These letters are dated May 12, July 05 and July 08.

The tenants filed letters of support from one tenant in the building and two from an adjacent building. The tenant admitted to keeping the door open while smoking outside, smoking under the windows of other tenants, feeding squirrels and birds and having loud arguments. The tenant stated that after she received the eviction notice, she refrained from doing all of the above mentioned activities.

The tenant agreed that she got into an argument with another tenant regarding walking her pet, near the tenant's window. However, she stated that this occurred in March 2009, and there has been no problem since.

The tenant stated that the fire alarm incident occurred due to a smoking pan in her unit. She argued that there was no fire and she acted in a way that she thought was in the best interest of everyone.

She took the smoking pan outside to dissipate the smoke – but inadvertently set off the smoke detector in the hallway. The tenant also stated that this had only happened once.

The tenant agreed that she owed money for the storage locker, but stated that it was a misunderstanding on her part and that she was willing to pay it, immediately.

### **Analysis**

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenants significantly disturbed another occupant, jeopardized the health and safety of another occupant, put the landlord's property at significant risk or breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

I find as a fact that the tenants did engage in activities that caused disturbances. Examples of these activities are feeding wild life, loud verbal altercations and arguing with another tenant. The tenants also jeopardized the health and safety of other tenants by smoking under the windows to their suites and leaving the back door open and unattended.

However, the landlord failed to serve the tenant with written notice to refrain from these activities. The landlord sent out a common letter to all tenants making reference to some of the above activities. In addition, the tenants ceased these activities immediately upon receiving the notice to end the tenancy. The landlord agreed that the above mentioned problems do not exist at this time.

Having found that the tenants did engage in the above activities, I also find that the landlord has not proven that the tenants continued these activities after receiving the written notice to end tenancy. I find that at this time, the tenants are not disturbing other occupants nor are they jeopardizing the health and safety of other tenants. In addition, the tenants have ceased all activity that puts the landlord's property at risk and have agreed to pay the outstanding rent for one month of storage.

The tenants would be wise to refrain from giving the other occupants reason to complain. I find it timely to put the tenants on notice that, should the tenants resume the

above mentioned activities; the landlord will have grounds to serve a notice to end tenancy.

**Conclusion**

The notice to end tenancy is set aside and the tenancy will continue.

Dated July 16, 2009.

---

Dispute Resolution Officer