



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, OPC, MNDC, RP, RPP, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and to recover the filing fee for this proceeding. The Tenant applied to cancel a Notice to End Tenancy for Cause, for an Order that the Landlord make repairs, for an order that the Landlord return personal property and for compensation for damage or loss under the Act or tenancy agreement as well as to recover the filing fee for this proceeding.

RTB Rule of Procedure 2.3 states that “if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.” I find that the Tenant’s application for repairs, that the Landlord return personal property and for compensation for damages are unrelated to her application to cancel a Notice to End Tenancy and accordingly, they are dismissed with leave to reapply.

### Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?

### Background and Evidence

This tenancy started sometime prior to January 1, 2008 when the current Landlord purchased the rental property.

The Landlord claimed that the Tenant resides in the lower suite of the rental property and another tenant resides in the upper suite. The Landlord said there is a lot of friction between the two tenants and that much of the friction has been caused by the actions of the Tenant. Consequently on July 27, 2009, the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause. The Notice alleged the following grounds:

- The Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;

Residential Tenancy Branch  
Ministry of Housing and Social Development

- The Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
- The Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit.

The Landlord said that on one occasion, the Tenant advised the upstairs tenant that her ex-boyfriend had hired “a hit” on her son. On another occasion, the Tenant accused the upstairs tenant of taking her cat and claimed she could hear it in the upper suite. And on another occasion, the Tenant confronted the upstairs tenant’s parents and told them that the upstairs tenant and her boyfriend were terrible people. The Landlord claimed that the upstairs tenant became so frustrated with the Tenant that she advised the Landlord she would move out if the Tenant did not leave.

The Landlord also claimed that the Tenant has interfered with her duties as a Landlord. On a couple of occasions, she said the Tenant advised her that she would withhold her rent payment until repairs were made. On another occasion, the Landlord said the Tenant refused to agree to an annual rent increase that had been the practice every year.

The Landlord said that she listed the rental property for sale last year in the fall and that her realtor told her that the Tenant had complained to a prospective purchaser’s realtor that the house was drafty and generally suggested that it would not be a good property to purchase. The Landlord said she left a voice message for the Tenant advising her that if she had any concerns about needed repairs she should contact the Landlord. The Landlord claimed that the Tenant then contacted her realtor and demanded the name and telephone number of the other realtor to whom she had spoken.

The Tenant admitted that there was friction between herself and the upstairs tenant but denied that she was responsible for it. The Tenant denied telling the upstairs tenant that her ex-boyfriend had hired a hit on her son. The Tenant also denied ever having a conversation with the upstairs tenant’s parents. The Tenant admitted to asking the upstairs tenant if her cat was upstairs as she could hear it. The Tenant said the upstairs tenant denied hearing the cat but a few moments later she could hear the patio door open and her cat showed up a few minutes later. The Tenant claimed that the upstairs tenant(s) had treated her badly by failing to advise her about a water tank leak, by taking some of her u-haul boxes from the laundry room and smoking marijuana in the rental property (although with a permit). The Tenant claimed she had gotten along well with previous tenants of the rental property.

The Tenant denied telling a prospective purchaser's realtor that the rental unit was drafty or that they should not purchase it. The Tenant admitted to saying that she could hear noise through the floors because they had not been properly insulated and that the entrance way was always dark. The Tenant argued that this was not false information but an honest response to questions asked of her by the prospective purchaser's realtor.

## Analysis

The Landlord admitted that she was not alleging that the Tenant had engaged in an illegal act and that she had checked off that ground (the second ground alleged above) on the Notice in error.

The Landlord also admitted that she did not advise the Tenant about the other tenant's complaints or give her any warnings that her conduct could result in the tenancy being ended. Unless a Tenant's conduct is so serious that a single incident warrants eviction without further notice, it is a fundamental principle of administrative fairness and natural justice that a person be given a warning that their conduct is not acceptable, be made aware that failure to stop the conduct will place their tenancy in jeopardy and also be given an opportunity to answer to the allegations. Based on the evidence of both parties, I find that this did not occur. As a result, I find that there is insufficient evidence to support the first ground of the Notice.

I also find that there is insufficient evidence to conclude that the Tenant knowingly gave *false* information to a prospective purchaser. While the Tenant's conduct may have been unhelpful and unwanted by the Landlord, there was no evidence that the information given by her was false. Consequently, I find that there is insufficient evidence to uphold any of the grounds set out on One Month Notice to End Tenancy for Cause dated July 27, 2009 and it is cancelled.

By virtue of these proceedings, there is now a presumption that the Tenant has been warned about her conduct and that any further actions or conduct on her behalf that significantly interferes with or unreasonably disturbs another occupant or the Landlord, may be considered as grounds for ending the tenancy in future. With respect to the Landlord's complaint about the Tenant withholding rent, both Parties should obtain information about the Landlord's right to end the tenancy by serving the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent in such circumstances. With respect to the Landlord's complaint that the Tenant refused to pay a rent increase, both Parties should obtain information about the Landlord's right to increase rent annually without the Tenant's consent upon serving her with a Notice of Rent Increase that complies with the Act.



# Dispute Resolution Services

Page: 4

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Conclusion

The Landlord's application is dismissed. The Tenant's application for repairs, for the return of personal property and for compensation for damages is dismissed with leave to reapply. The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated July 27, 2009 is granted and the tenancy will continue.

As the Tenant has been successful in this matter, she is entitled to recover the \$50.00 filing fee for this proceeding and pursuant to s. 72 of the Act, she may deduct that amount from her next rent payment when it is due and payable.

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: September 22, 2009.

---

Dispute Resolution Officer