



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

CNC, MT

### Introduction

Both parties were present at the hearing. At the start of the hearing I introduced myself, the Application for Dispute Resolution was reviewed, the hearing process was explained to the parties and the parties were provided an opportunity to ask questions in relation to the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral evidence, to cross-examine the other party, and to make submissions during the hearing.

### Preliminary Matter

The landlord testified that on October 12, 2009 the landlord personally served the tenant with her evidence package. The tenant testified that he did not receive this evidence and only received a copy of the Notice to End Tenancy. The landlord was unable to provide verification of service as a witness was not present to observe this personal service; therefore I determined that the landlord may refer to the written materials submitted as evidence and provide oral testimony in relation to those documents.

### Issue(s) to be Decided

Is the tenant entitled to more time to apply to cancel a One Notice to End Tenancy for Cause?

Should the One Month Notice to End Tenancy for Cause issued on August 28, 2009 be cancelled?

### Background and Evidence

The landlord and the tenant agree that a 1 Month Notice to End Tenancy for Cause issued on August 28, 2009 was served to the tenant's adult girlfriend who the tenant agrees lives with him at the rental unit. The Notice required the tenant to vacate the rental unit on September 30, 2009. The tenant applied for dispute resolution on

September 8, 2009 and the application process was completed on September 9, 2009. The tenant testified that he had been injured and unable to apply one day earlier as he was confined to bed.

The reasons stated for the Notice to End Tenancy were that the tenant has allowed an unreasonable number of occupants in the unit; significantly interfered with or disturbed another occupant or the landlord; seriously jeopardized the health, safety or lawful right of another occupant or the landlord; has engaged in illegal activity that has or is likely to damage the landlord's property and that the tenant has caused extraordinary damage to the rental unit.

The landlord presented the following evidence and arguments to support the Notice to End Tenancy for Cause:

- between August 2, 2009 and August 12, 2009 the tenant came to the landlord's door on eight occasions, apparently drunk and harassing the landlord, repeatedly requesting an additional key to the unit;
- that on August 7, 2009 the tenant kicked the front door, was drunk and staggering in the hallway and that he let an unknown individual into the building;
- that the tenant and his girlfriend are bringing multiple shopping carts onto the property and into the building, causing damages;
- on August 31, 2009 a resident called to report that the tenants were fighting in their unit, that the police attended;
- that the tenant is generally disruptive, disturbing the quiet enjoyment of other tenants;
- that the tenant is leaving the back door to the building open so that his acquaintances can come and go, which affects the security of the building; and,
- that the tenant hangs around the lobby, is a menace to everyone and bothers people.

The landlord witness J.S. testified that on September 30, 2009 he witnessed a person he believes to be the female tenant purchasing drugs on the nearby corner, that she could not gain entry to the building and that the tenant in unit 101 let her in through the window.

The landlord witness S.S. testified that some time after the landlord gave the tenant notice to end the tenancy she heard the tenant make an inappropriate sexual comment to an eleven year old girl.

The police witness provided the following summary of contact with the tenant at the rental unit:

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- February 9, 2009 – 911 call from tenant to police, when they arrived no one is at the rental unit;
- September 23, 2009 report by tenant that guest threatened him, no evidence established;
- September 14, 2009 report by landlord that the tenant has threatened another resident with a knife, that the resident was not identified and insufficient evidence for charges;
- August 3, 2009 the tenant and his girlfriend reported they had been assaulted by the Hell's Angels in their residence, the landlord reported that a resident had heard a domestic assault, no evidence of intruders;
- August 30, 2009 report by the tenant that he was assaulted by another resident, tenant was drunk, no statement provided, investigation abandoned;
- August 28, 2009 – police attended unit due to report of loud stereo, tenants were drunk but cooperative.

The tenant testified that he is not a nuisance and can not believe the allegations being made against him. The tenant stated the incidents are being blown out of proportion and that he is always cooperative.

The tenant's witness who lives in a neighbouring unit stated that she has known the tenant since June 2009 and that she does not have any concerns with his behaviour. This witness stated that the tenant was assaulted in the building and that the police claim that this incident was a domestic dispute is incorrect.

The landlord testified that other witnesses were unavailable to testify.

## Analysis

I have accepted the tenant's testimony that he made application to dispute this notice one day late as he was unable to attend at the Residential Tenancy Branch due to an injury. In order to ensure a just process I find that tenant is entitled to dispute the Notice and accept his testimony that he was unable to fully complete his application within ten days. Further, the tenant did initiate his application on September 8, 2009, which was within the required ten day time-frame.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has allowed an unreasonable number of people into the rental unit or that the tenant has engaged in illegal activity that would damage the landlord's property. There is one incident reported of the tenant kicking a door, however, there is no report of damage that occurred.

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There is no evidence before me that the tenant has caused extraordinary damage to the rental unit or property.

The majority of the allegations made by the landlord related to the tenant significantly interfering with or unreasonably disturbing others and placing the safety of others at risk. There is no evidence before me of another occupant being threatened with a knife by the tenant; the landlord has not provided the occupant's name or any other details and a police investigation concluded there was no evidence of such a threat having been made. There are reports of the tenant approaching the landlord when he is intoxicated, although I have determined that the tenant has not been provided adequate warning that this behaviour must cease. I find that the tenant has been a nuisance to the landlord and engaged in behaviour, when intoxicated, that is unwelcome. The landlord has not provided any details regarding the frequency of the door being left open, the dates this occurred and any discussion or warnings that may have occurred with the tenant.

In reaching this conclusion I have considered the lack of evidence of any written communication with the tenant in relation to the reported disturbances and alleged threats to the safety of other tenants. I have also considered the six police reports; one of which is unfounded, four the result of calls made by the tenant and one in which the tenants were cooperative. These reports do not provide adequate reasons to end this tenancy as the majority are the result of calls made by the tenant and none indicate the tenant has posed a risk to others.

Harassment is defined in the *Dictionary of Canadian Law* as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome." The landlord has alleged the tenant harassed her by coming to her door in an intoxicated state on repeated occasions. I do not find that this conduct constitutes harassment; however, the tenant must be aware that further incidents could be determined as disturbing to the landlord. The landlord is the point of contact for tenants, but a tenant must ensure that they engage in conduct that is reasonable. The tenant must understand that any further behaviour of a similar nature could result in the landlord taking further action under the Act.

I have not placed weight on the witness testimony that the female occupant of the rental unit was seen purchasing drugs and then entering the rental unit. There is no evidence that this person did purchase drugs.

Of concern is the tenant's assertion that the allegations are overblown. There is testimony alleging the tenant engages in behaviour that is disturbing others and allowing non-residents access to the rental unit. Of further concern is the report of an inappropriate comment made by the tenant to a young female.

This decision may form a warning to the tenant that he has now been provided with a clear indication that the landlord is concerned with his behaviour. Further confirmed reports of disturbance by the tenant or his guests to other occupants or the landlord, activities that may place others at risk, such as leaving doors unlocked, or any other activities that breach the expectations under the Act, may place this tenancy in jeopardy. The landlord is at liberty to issue a further notice to end tenancy if she believes there is sufficient cause.

## Conclusion

As I have determined that the landlord has failed to satisfy the legislative requirements to end a tenancy for cause, I am cancelling the Notice to End Tenancy issued on August 28, 2009. This tenancy will continue.

I have included a copy of the Guide for Landlords and Tenants in British Columbia for the reference of each party.

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: October 27, 2009.

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Dispute Resolution Officer