



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

CNC

### Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution requesting a Notice to End tenancy for Cause be cancelled.

Both parties were represented 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

At the start of the hearing there was disagreement between the parties in relation to the male resident named on the tenant's Application for Dispute Resolution. During the hearing the agent for the landlord testified that the tenant was allowed to have a second person live in the unit and that she had told the landlord her boyfriend was quiet. The landlord testified that the tenant was allowed a second occupant and the one page of a tenancy agreement submitted as evidence indicates that two people are allowed to live in the rental unit.

There is no evidence before me that the tenant's boyfriend entered into a written or verbal tenancy agreement with the landlord, therefore; I find that he is an occupant. However, my decision in relation to the end of the tenancy equally impacts both the tenant and any occupant of the rental unit.

### Issue(s) to be Decided

Should the One Month Notice to End Tenancy Issued on August 31, 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 31, 2009 was served on the tenant indicating that the tenant was required to vacate the rental unit on September 30, 2009. The reasons stated for the Notice to End Tenancy were that the tenant has allowed an unreasonable number of occupants in the rental unit; significantly interfered with or unreasonably disturbed, seriously jeopardized the health and safety or lawful right of another occupant or the landlord; put the landlord's property at significant risk; engaged in illegal activity that has or is likely to damage the landlord's property; adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and jeopardized a lawful right or interest of another occupant or the landlord.

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

- a May 21, 2009 letter to the tenant reviewing an incident that occurred on May 18<sup>th</sup>, the letter indicates there has been excessive noise and activity into the early hours of the morning that appears to be related to trafficking and repeated police calls due to upset occupants of the building, the letter reminds the tenant she is responsible for the actions of her guests, that this is the second notice that conducting illegal activity is forbidden and that the other occupants have the right to quiet enjoyment, that continuation of problems will result in a end of the tenancy;
- a July 14, 2009 letter to the tenant reminding her of the May 18 warning and letter of May 21, 2009, that behaviour continues that is disturbing other occupants and that a complaint has been received from a neighbouring building, that the tenant has disturbed others at 3 am and 2:30 am and 8 am when attempting to enter the building, that the tenant has given her key to a visitor and has left the entry door ajar which compromised building security, that visitors are coming to the building at all hours and that the building has been the subject of police action due to her behaviour, that the landlord wishes to end the tenancy, and;
- a September 18, 2009 letter to the tenant that she may remain in the building if her occupant were to leave, that she has disturbed others by arguing with this individual, that the occupant has allowed strangers into the unit when the tenant is away and that a fight occurred, that the occupant was seen exiting the suite from a 3<sup>rd</sup> floor window.

The landlord provided copies of notes received from the tenant during the summer of 2009. In these notes the tenant acknowledges the disturbing behaviour of her occupant and states that she will remain in the unit on her own or move out by the 15th. An

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August 2009 note to the landlord, written after the tenant returned from an absence, indicates that she found the apartment in disarray and an August 14 note states that she is having repairs made to the rental unit. Another letter indicates that the occupant has moved out and that the tenant can not “take anymore stress or yelling.”

The landlord witness J.D. provided affirmed testimony that there are arguments heard coming from the unit, that people come and go all night, that several days ago he was awakened at 2 am and banged on the tenant’s door, that he has talked with occupants who live directly next to and below the tenant and that these individuals are most affected by the noise, that he has witnessed the tenant providing access to visitors via an emergency exit that is not to be used.

The landlord witness O.R. provided affirmed testimony that she has called the police seven times in relation to the disturbances caused by the tenant. The witness stated it has been a nightmare, that she is constantly disturbed between 3 and 5 am, that the noise frightens her and that she is now losing so much sleep she is missing work and that her employment is at risk. The witness stated that when she last called the police in September they did not come as it was determined that this is a routine problem. The witness stated that last weekend there was noise coming from the rental unit from midnight until 4 a.m. and that she was unable to sleep resulting in her missing an early shift at work on Sunday.

The landlord’s agent testified that she cleans the apartment building and that other tenants are complaining about the tenant. This witness stated that within the last month the tenant had told her she would be asking the occupant to leave.

During the hearing the tenant testified that the occupant below her unit complains for no reason and that a previous occupant had warned her that she could expect complaints. The tenant stated that there have been problems in the past but that they are now corrected. The tenant stated that there is no evidence she has left doors open. The occupant did not offer any testimony.

## Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has significantly interfered with or reasonably disturbed another occupant or the landlord and that the safety of other occupants is at risk. In reaching this conclusion I have relied on the following evidence:

- the consistent testimony from the landlord’s witnesses;

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- the warning letters issued to the tenant indicating that her behaviour and that of her guests is disturbing the quiet enjoyment of other occupants, and;
- the tenant's own written notes which confirm allegations made by the landlord and the witnesses.

The landlord had offered to allow the tenant to remain in the rental unit if the male occupant moved out; the tenant has rejected this offer and denies the allegation that others are being unreasonably disturbed. I find, on the balance of probabilities, that the tenant has placed the security of other occupants at risk by allowing use of the emergency door and leaving the door open for entry by those who do not reside in the building. I also find that the tenant has failed to respond to the concerns of the landlord and that noise and disturbances have continued to unreasonably disturb others.

During the hearing the landlord stated that he wanted the tenant to move out as soon as possible; therefore, as I have dismissed without leave the tenant's application to cancel the notice and, as provided by section 55(1) of the Act, I grant the landlord an Order of possession.

## Conclusion

As I have determined that the landlord has satisfied the legislative requirements to end a tenancy for cause, I am dismissing the tenant's application to set aside the One Month Notice to End Tenancy and I grant the landlord an Order of Possession that is effective two days after service to the tenant.

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 29, 2009.

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Dispute Resolution Officer