



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes            CNC, OLC, RP

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel a Notice to End Tenancy for Cause, to Order the landlord to comply with the Act and to order the landlord to make repairs to the unit.

The tenant served the landlord by registered mail on September 04, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Should the notice to end tenancy for cause be cancelled?
- Is the tenant entitled to an order for the Landlord to repair the rental unit?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?

### Background and Evidence

Both parties agree that this tenancy started on April 01, 2008. Rent for this basement suite is \$700.00 per month and is due on the 1<sup>st</sup> of each month. This is a month to month tenancy. The tenant paid a security deposit of \$350.00 on March 20, 2008. The landlord served the tenant

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with a One Month Notice to End Tenancy for cause on August 30, 2009. The reasons given on the notice state that the tenant has allowed an unreasonable number of occupants in the unit/site; the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; the tenant has engaged in an illegal activity which has, or is likely to adversely effect the quiet enjoyment, security or physical well-being of another occupant or the landlord.

The tenant disputes the reasons given on the notice. The tenant testifies that she lives in the rental unit with her two youngest daughters. She has a male friend that comes to visit most days but lives in his own rental unit. The tenant has provided a copy of her friends' rental agreement to support this. The children's fathers also visits and will occasional stay over for a weekend as he lives in the States. The tenant also has three other children who also come to visit along with the tenants' father and uncle. She states that none of these people occupy the rental unit.

The tenant testifies that there have been arguments with the tenants living upstairs. They have kept junk in the common areas of the garden and on her parking space. This junk has made the areas unsafe for her young children to play. The tenant and a neighbour tenant have asked the landlord to deal with this issue on many occasions but the landlord has not taken any action. The tenant and her neighbour put some fence panels around the junk in the yard to ensure their children could play safely in the common area. Eventually the tenant called the City By-Law enforcement office. They phoned the landlord and requested the junk was cleared up. The upstairs tenant has now cleared this junk and the tenant states that the area is now safe for the children to play. The tenant testifies that it was after she contacted the City that the landlord served her with the One Month notice.

The tenant testifies that she has not disturbed the upstairs tenant as the argument happened between the tenants upstairs and her friend over the issues with the junk in the common areas. She has found it frustrating trying to deal with the upstairs tenants or the landlord over this matter and eventually an argument happened. Now the junk has been removed there should be no cause for future arguments.

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The tenant also testifies that she has a problem with bed bugs and mice which the landlord has not treated despite notification from the tenant about the problems. The landlord sprayed the neighbouring unit but did not treat the tenants unit.

The landlord testifies that when they received a telephone call about the problems with the yard the landlord went round and offered to split the yard into three separate areas. However, the tenant refused to accept this. The landlord states the tenants' friend was very aggressive with the tenants upstairs and the landlord suggested to the upstairs tenants that they should call the police if his behaviour continues.

The landlord testifies that when ever they go to visit the tenant she has a number of people staying at the unit. He also testifies that the tenant has not notified them that she has bedbugs or mice. They would have treated it at the same time they treated the other unit however this tenants unit is very full and would be difficult to treat in its present condition. The landlord states the tenant becomes angry and upset when talking to the landlord about issues with the tenants upstairs. On one occasion the tenant called the landlords 20 times in a day.

The tenant confirms the landlord did offer to fence the back yard but this would have reduced her children's play area from 60 x 170 feet to approximately 20 x 20 feet of mud and concrete.

## Analysis

With regard to the first issue on the notice to end tenancy I find the landlord has not provided sufficient evidence that there are an unreasonable number of occupants residing at the rental unit. Section 30 of the Act states:

30 (1) A landlord must not unreasonably restrict access to residential property by

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- (a) the tenant of a rental unit that is part of the residential property, or
- (b) a person permitted on the residential property by that tenant.

With regard to the second issue on the notice to end tenancy I find the landlord has insufficient evidence to determine that the tenant or person allowed on the property by the tenant has significantly disturbed another occupant. I find the argument between the tenant, her friend and the upstairs tenants was caused by the upstairs tenants failing to make the common areas safe by removing their property from this area. I find the tenant had repeatedly asked the landlord to do something about this issue and the landlords' failure to comply resulted in a heated exchange. Now the junk and property has been removed from the common areas I see no reason why a repeat of the argument should occur. I have cautioned the tenant to attempt to resolve the issues with the tenants residing upstairs.

With regard to the third issue on the notice to end tenancy, I find the landlord has insufficient evidence to show that the tenant has engaged in an illegal activity which has adversely affected the quiet enjoyment, security, safety or physical well being of the other tenants or the landlord. While a tenant is responsible for her guests while they remain on the residential property there is no evidence to support the landlords claims that the tenants' guest threatened the upstairs tenants with a knife.

The landlord requested to alter the backyard area to help resolve any on-going issues with the common space. However, without the consent of all the tenants I find the landlord is unable to alter this area as it would restrict the tenant's access and enjoyment of the back yard and would be a restriction of her facility with regard to the use of this area pursuant to s.27 of the Act.

I also find the landlord has not complied with the act pursuant to s.32. A landlord must maintain a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. As the bedbug and mice problems have not been



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sufficiently dealt with the tenant is entitled to an Order for the landlord to comply with the act and take the necessary steps to treat her unit for these bug and rodent problems. I have cautioned the tenant to take the required steps to comply with instructions on how to prepare her unit for this treatment.

## Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated August 30, 2009 is cancelled and the tenancy will continue.

**I Order the landlord to comply with the *Residential Tenancy Act* s.32 and carry out the necessary treatment of the tenants unit to eradicate the bedbugs and rodents.**

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 20, 2009.

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Dispute Resolution Officer