



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes CNL, CNC, OLC, FF, O

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution to cancel notices to end tenancy.

### Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 2 Month Notice to End Tenancy for Landlord Use and a 1 Month Notice to End Tenancy for Cause; for an order to have the landlord comply with Act and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 47, 49, and 55 of the *Residential Tenancy Act (Act)*.

### Preliminary Issue

In confirmation of the written submissions provided by the landlord's witnesses, the landlord had three witnesses attend the hearing. Each witness was provided an opportunity to provide their testimony and answer questions from myself, the landlord and the tenant.

### Background and Evidence

The tenancy began on August 1, 2009 as a month to month tenancy for a monthly rent of \$1,000.00 per month due on the 1<sup>st</sup> of the month. A security deposit of \$500.00 was paid on September 20, 2009. No written tenancy agreement was signed by either party.

The tenant submitted into evidence the following documents:

- A copy of a handwritten notice from the landlord to the tenant dated November 15, 2009 to move out as the landlord intended to convert the rental unit to a non-residential use with an effective vacancy date of January 1, 2010; and
- A copy of an undated 1 Month Notice to End Tenancy for Cause with an effective vacancy date of January 1, 2010 citing the tenant is repeatedly late paying rent; the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord; the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property, adversely affect the quiet enjoyment, security or physical well-

being of another occupant or the landlord, or jeopardize a lawful right or interest of another occupant or the landlord; and the tenant has caused extraordinary damage to the unit or property.

The landlord submitted the following documentary evidence:

- Letters from two other tenants and a neighbour regarding complaints of noise from the dispute address; and
- A letter dated December 9, 2009 from the landlord stating she is rescinding the notice to given to the tenant stating she was going to take occupancy of the unit.

While the landlord contends that the tenant committed illegal activity by disobeying municipal noise bylaws, she provided no evidence substantiating there were any municipal bylaws regarding noise. The landlord asked to submit this evidence after the hearing.

In accordance with Rule 11.5 of the Residential Tenancy Branch Rules of Procedure the tenant was not willing to have the matter adjourned in order to review the additional evidence and as such, I refused to accept the landlord's additional evidence.

The landlord testified that her intent in issuing the notice dated November 15, 2009 was not to change the status of the rental unit to a non-residential use but that she was trying to avoid a confrontation with the tenant and thought that would be the best approach.

The landlord testified that she is intimidated by the tenant due to his size and the stance he sometimes takes, such as crossing his arms when in conversation with her. She also testified that other tenants were intimidated by the tenant and in fact she stated one tenant had moved out because of this issue.

The female tenant witness testified that she did on occasion feel intimidated by the tenant but that it was primarily due to his size and she could not identify any specific incident attributed to the tenant. The female tenant also testified that there was noise from the tenant's stereo and from parties with people talking and laughing until the early mornings on a few occasions.

The male tenant witness provided testimony confirming the tenant did on occasion have parties and had his music playing loudly. This witness indicated that when it occurred it really wasn't that bad nor did it happen that often.

The neighbour witness testified regarding loud music playing in the tenant's vehicle when he drives into the driveway at all hours of the day and night, as well as coming from the tenant's rental unit. The tenant questioned the neighbour as to how he knew the music was coming from the tenant's rental unit. The neighbour indicated he could tell by the type of music that was being played.

The landlord testified that she had spoken to the tenant on many occasions regarding the noise and asked him to keep things down. She further testified that she had never advised the tenant of any consequences to the tenancy should he not comply with her requests to keep the noise down.

The tenant testified that he has changed his behaviour since the dispute has begun but the landlord could not confirm this as she testified that as a result of feeling intimidated by the tenant she has not been living at the residential property for several weeks.

The landlord testified that the tenant had been late paying rent for the months of September and November 2009. She stated that the tenant had been out of town and she could not reach him and he paid on the 3<sup>rd</sup> or 4<sup>th</sup> of the month. She further testified the tenant had not paid rent at all for January, 2010.

The tenant testified that he had not been able to find the landlord to pay the rent on the 1<sup>st</sup> of the month for those two months and that he had not paid rent for the month of January, 2010 because he thought that would be the compensation he is entitled to under Section 51 of the *Act* when a landlord ends a tenancy for their own use.

### Analysis

Section 49 of the *Act* states a landlord can end a tenancy to convert the rental unit to a non-residential use, provided they give the tenant notice that is not earlier than 2 months after the date the tenant receives the notice and that the notice must be in compliance with Section 52 of the *Act*.

Section 47 of the *Act* states a landlord can end a tenancy for repeatedly late paying rent; the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord; the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property, adversely affect the quiet enjoyment, security or physical well-being of another occupant or the landlord, or jeopardize a lawful right or interest of another occupant or the landlord; and the tenant has caused extraordinary damage to the unit or property.

Section 52 states that a notice to end a tenancy must be in writing and must:

- a) Be signed and dated by the landlord giving the notice;
- b) Give the address of the rental unit;
- c) State the effective date of the notice;
- d) State the grounds for ending the tenancy; and
- e) Be in the approved form.

In regards to the landlord's notice to end the tenancy dated November 15, 2009, I find the notice has no effect because it is not compliant with Section 49 in providing the tenant with

2 months notice; it is not compliant with subsections b) and e) of Section 52; and the landlord has submitted to the hearing, in writing, that she has rescinded the notice.

As to the landlord's claim that the tenant is repeatedly late paying rent, she has provided no evidence, other than her verbal testimony that is disputed by the tenant, to substantiate her claim; I therefore dismiss this as sufficient cause to end the tenancy.

In the absence of confirmation of any municipal noise bylaws I dismiss the landlord's claim of cause regarding the tenant being engaged in illegal activity that has, or is likely to damage the landlord's property, adversely affect the quiet enjoyment, security or physical well-being of another occupant or the landlord, or jeopardize a lawful right or interest of another occupant or the landlord.

In relation to the landlord's claim that the tenant has significantly interfered with or unreasonably disturbed another occupant and seriously jeopardized the health or safety or lawful right of another occupant or the landlord, I find that she has failed to provide sufficient evidence to justify this cause or that she has provided sufficient warnings of the consequences to the tenancy should the tenant fail to comply with requests to reduce the noise.

And finally, in regards to the 1 Month Notice to End Tenancy for Cause that was issued by the landlord, I find that the notice itself is ineffective as it was not dated as required by Section 52(a) of the *Act*.

### Conclusion

As a result of my above noted findings, I grant the tenant's application to cancel both Notices to End Tenancy and find the tenancy remains in full force and effect.

As I have found that the notice given to the tenant for the landlord to change the use of the property is not effective, the tenant must pay rent for the month of January 2010. Should the tenant fail to do so, the landlord may consider issuing a notice to end tenancy for unpaid rent as per Section 46 of the *Act*.

As the tenant was successful in his application I find that he is entitled to recover the filing fee for his Application and he may reduce his January, 2010 rent by \$50.00 in accordance with Section 72 (2)(a).

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: January 06, 2010.

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Dispute Resolution Officer