



## Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

### **Decision**

#### **Dispute Codes:**

CNC

RP

#### **Introduction**

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated December 22, 2009. Both parties appeared and gave testimony in turn.

#### **Issue(s) to be Decided**

The tenant is disputing the basis for the notice and the issues to be determined based on the testimony and the evidence are:

- Whether the criteria to support a One-Month Notice to End Tenancy under section 47 of the *Residential Tenancy Act*, (the *Act*), has been met, or whether the notice should be cancelled on the basis that the evidence does not support the cause shown.

The burden of proof is on the landlord to establish that the notice was justified.

#### **Background and Evidence: One Month Notice**

The tenancy began on October 1, 2009 with rent set at \$750.00 and a security deposit of \$375.00 was paid. The tenant had submitted into evidence a copy of the One-Month Notice to End Tenancy for Cause dated December 22, 2009 showing an effective date of February 1, 2010. The One-Month Notice to Notice

to End Tenancy for Cause indicated that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. No other evidence was submitted by either party.

The landlord testified that the One Month Notice was issued on December 22, 2009 after an incident which involved the police attending the unit late at night. The landlord testified that there had been previous similar incidents and that the tenants had also disturbed the landlord with noise at night such as loud discussions and arguments. The landlord testified that the tenant had been verbally warned but this did not resolve the problem. The landlord acknowledged that other renters in the building had also caused disturbances but added that these situations were being dealt with. Although not relevant to the One Month Notice issued, the landlord also mentioned being concerned about the fact that the tenant had neglected to pay a pet-damage deposit after getting a dog despite being asked to do so in writing.

The tenant testified that the incidents involving police prior to the December 22, 2009 occurrence were not connected to any activity by the tenants, but were related to other law enforcement concerns and the tenant provided specific details about what transpired. In regards to late-night noise, the tenant testified that there was only one time on a weekend early in the tenancy that they became aware that the landlord was bothered by their music and conversation and they had avoided socializing after hours ever since that time. The tenant stated that they were very receptive to any concerns by the landlord. The tenant felt that the landlord had issued the One Month Notice because the tenant had insisted on a written tenancy agreement and asked for repairs.

#### **Analysis: One Month Notice to End**

While I accept the landlord's verbal testimony that there were concerns about the noise and that a verbal warning was issued, I also note that the landlord had not issued a written warning and did not submit any evidence other than verbal allegations. I must point out that under the Act, tenants are not required to be

absolutely silent. However the activities of a tenant must not significantly interfere with nor unreasonably disturb other occupants. The difficulty is that perception of what level of noise is “reasonable” can be influenced by the sensitivity or subjectivity of a particular occupant. Exposure to noise between units can depend upon the age and structure of the building in relation to how sound carries or what floor covering is used. Diversity in lifestyle may also be a factor. The interference must be proven to be significant and unreasonable and this is not an easy determination to make with the conflicting testimony before me. However the burden of proof remains on the landlord.

A mediated discussion ensued and the parties agreed that it would be best to end the tenancy. The date of July 1, 2010 was found to be acceptable to both parties. Accordingly, I hereby grant an Order of Possession to the landlord reflecting this agreement. The tenant made a commitment to avoid causing further disturbances and to leaving the unit in a clean undamaged condition. The parties also agreed that the tenant will not be required to pay the pet damage deposit and that the tenant will be permitted to vacate earlier than July 1, 2009, should another suitable residence be successfully obtained.

### **Background and Analysis – Order for Repairs**

The tenant gave testimony about some needed repairs to the unit including a broken cupboard door, missing light bulbs, a drawer in the bathroom that falls out,, some holes in the walls and the lack of an internal lock between the units. The tenant also took issue with the fact that the tenant had to do a substantial amount of heavy cleaning of the unit upon moving in and had to repair a problem with the entry door.

The landlord testified that he was willing to take a look at the repair request and address the problems if necessary. I find that no order is warranted and that this matter will be left up to the parties to pursue further between themselves.

**Conclusion**

Based on the above, I hereby order that the One-Month Notice to End Tenancy of December 22, 2009 be cancelled and of no force nor effect. Pursuant to the mutual agreement reached between these parties, I hereby issue an Order of Possession in favour of the landlord effective July 1, 2010 at 1:00 p.m. This Order must be served on the Applicant tenant and may be enforced by the Supreme Court if necessary.

February 2010

Date of Decision

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Dispute Resolution Officer