

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated January 29, 2010 and to recover the filing fee for this proceeding.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

### Background and Evidence

This tenancy started in the summer of 2001. The rental unit is a cabin which is located on the same property as a main house where the Landlord resides with other tenants. On January 29, 2010, the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause. The grounds indicated on the Notice were as follows:

- The Tenant or a person permitted on the property by the Tenant has:
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord
  - 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.

The Landlord's agent said that approximately 2 years ago, the Tenant got a puppy without the consent of the Landlord even though the Landlord advertised the rental unit (7 years earlier) as "no pets." The Landlord's agent claimed that the Landlord only discovered that the Tenant had the dog a few months later and reluctantly agreed to allow him to keep it. However, the Landlord's agent said the dog damaged 2 shrubs when it was still a puppy.

The Landlord's agent also said that approximately 1 ½ years ago, the Tenant got into a verbal dispute with a tenant of the main house over feeding his dog. The Landlord's agent said the other tenant poured ice water on the Tenant who came to the front door of the main house in an intoxicated state and demanded that the Landlord evict the other tenant.

The Landlord's agent further said that approximately one year ago, the Tenant left a note on a neighbour's vehicle parked on the public road accessing the rental property.

The note demanded that the driver of the vehicle move out of the Tenant's parking space. The Landlord's agent said that the driver of the other vehicle mistakenly believed he had written the note and engaged him in a heated argument.

### Analysis

I find that there is no evidence of the Tenant having engaged in an illegal act (such as a charge or conviction under the Criminal Code or Offence Act, for example) and as a result I find that the Landlord cannot rely on this ground of the One Month Notice.

I also find that there is no evidence that the Landlord or another occupant of the rental property has been significantly interfered with or unreasonably disturbed. The Landlord's agent admitted that the incident where the Tenant left a note on a car parked on the street involved a neighbour and not another occupant of the rental property. Even though the Landlord's agent may have had a confrontation with the neighbour who mistakenly thought he was the author of the note, he cannot blame the neighbour's reaction or actions on the Tenant. Furthermore, the Tenant provided a written statement from another tenant of the rental property who claimed that he is friends with the Tenant and is not concerned for his safety as the Landlord alleged.

Furthermore, I find that the Landlord cannot rely on incidences that took place over a year ago to support any of the grounds alleged on the Notice. In particular, it does not stand to reason that the Landlord would allege on the one hand that she (or another occupant of the rental property) was significantly interfered with or unreasonably disturbed by an act of the Tenant's but take no steps for almost 2 years to serve him with a Notice to End Tenancy due to that incident. Furthermore, unless an incident is so serious that it warrants eviction for a single occurrence, fairness requires that a tenant be given a warning that a repeat of his conduct may result in the tenancy being ended and that he be given a reasonable opportunity to amend his behavior. There was no evidence of any such warnings having been given to the Tenant.

In any event, the Landlord's agent admitted that the Notice was served on the Tenant because he had a verbal disagreement with the Landlord over the payment of the cable bill. The Tenant claimed that cable was included in the rent however, the Landlord was of the view that it was not supposed to be and wanted the Tenant to start paying for it. Consequently, the Landlord's agent said the Landlord believed that she could rely on past incidences involving the Tenant as grounds to end his tenancy.

For all of the above reasons, I find that there is insufficient evidence to support the remaining grounds on the One Month Notice to End Tenancy for Cause dated January 29, 2010. Consequently the Notice is cancelled and the tenancy will continue. As the Tenant has been successful in this matter, I find that he is entitled to recover the \$50.00 filing fee for this proceeding and I order pursuant to s. 72 of the Act that he may deduct that amount from his next rent payment when it is due and payable.

### Conclusion

The Tenant's application is granted; the One Month Notice to End Tenancy for Cause dated January 29, 2010 is cancelled. 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: May 10, 2010.

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Dispute Resolution Officer