

## **DECISION**

### **Dispute Codes:**

CNC

### **Introduction**

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

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

The issue to be decided is whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside.

### **Background and Evidence**

The Agent for the Landlord and the Tenant agree that the Tenant moved into this rental unit on November 19, 2009 and that he is required to pay monthly rent of \$625.00 plus \$30.00 for utilities.

The Agent for the Landlord and the Tenant agree that a 1 Month Notice to End Tenancy for Cause was personally served on the Tenant on May 24, 2010, which declared that the Tenant was required to vacate the rental unit on June 30, 2010. The reasons stated for the Notice to End Tenancy were that that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; that the Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk; and that the Tenant has breached a material term of the tenancy that was not corrected within a reasonable time.

The Agent for the Landlord and the Tenant agree that on April 24, 2010 they reached a verbal agreement that the Tenant would not allow the mother of his child access to the residential property. The Agent for the Landlord stated that the Landlord is now seeking to end this tenancy because the mother of the Tenant's child continues to come to the residential complex and that she causes disturbances while she is there.

The Tenant stated that he has abided by the verbal agreement not to permit the mother of his child access to the residential property; that he has not permitted her access to the property since April 24, 2010; that he is aware that she has been on the property since that time but it has not been at his invitation; that she knows people who reside in the complex that must be providing her with access; that she came to his rental unit on May 10, 2010 and he asked someone to phone the police of his behalf to have her removed; and that she was removed at approximately 0930 hours on May 10, 2010.

The Tenant submitted a copy of a Court Order, dated March 18, 2009, which stipulates that the mother of the Tenant's child is prohibited from entering into any premise that is occupied by the Tenant. The Tenant stated that after the incident on May 10, 2010 he applied to have this Court Order varied and that it has recently been amended to stipulate that the mother of the Tenant's child is prohibited from being within 500 metre of a residential complex that is occupied by the Tenant. The Tenant did not submit a copy of the amended Order in evidence.

The Agent for the Landlord stated that the Tenant advised him of this variance to the Court Order but he has not actually seen a copy of the Order.

The Agent for the Landlord stated that the mother of the Tenant's child continues to create a problem at the residential complex and has been seen on the property on several occasions since April 24, 2010. He stated that the Tenant does not create a disturbance at the residential complex and that the Landlord wishes to end the tenancy simply because the mother of the Tenant's child creates problems at the complex. He has no evidence to indicate that the Tenant is providing the mother of the Tenant's child with access to the building.

The Witness for the Landlord stated that she has never observed the Tenant provide the mother of the Tenant's child with access to the rental unit after April 24, 2010. She stated that she saw the police remove her from the Tenant's rental unit on May 10, 2010, although she does not know how she gained access to that suite. She stated that she saw her passed out on the fourth floor later in the afternoon on May 10, 2010, although she does not know how she gained access to that complex at that time. She stated that she "thought" she heard the mother of the Tenant's child inside the Tenant's rental unit, although she acknowledged, without prompting, that "it could have been someone else".

### Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the Landlord has provided insufficient evidence to show that the Tenant has permitted the mother of his child to be on the property after May 24, 2010, which is when he advised the Landlord that he would not permit her to be in his rental unit or on the residential property.

In reaching this conclusion I was strongly influenced by the absence of evidence from any person who observed the Tenant grant the mother of his children with access to the residential property; by the Tenant's statement that he did not permit the mother of his child to enter his rental unit on May 10, 2010 and that he initiated the report to the police which resulted in her being removed from his rental unit; by the absence of evidence that refutes the Tenant's statement that he did not permit the mother of his child to enter his rental unit on May 10, 2010 and that he initiated the report to the police which resulted in her being removed from his rental unit.

I was also strongly influenced by the Tenant's statement that he had his Court Order varied recently and that the mother of his child is no longer permitted to be within 500 metres of a residential complex in which he resides. This causes me to conclude, on the balance of probabilities, that the Tenant does not wish to have any contact with the mother of his child and that he is not the person who has been granting her access to the residential complex since April 24, 2010.

On this basis, I find that the Landlord has failed to establish that a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord, has seriously jeopardized the health or safety or lawful interest of another occupant or the Landlord or has put the Landlord's property at significant risk. I further find that the Landlord has failed to establish that the Tenant has breached his verbal agreement to not provide the mother of his child with access to the rental unit.

### Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that it has grounds to end this tenancy pursuant to section 47(1)(d) or 47(1)(h) of the *Act*, I hereby set aside the One Month Notice to End Tenancy, that was served on the Tenant on May 24, 2010, and I order that this tenancy continue until it is ended in accordance with the *Act*.

In an effort to preserve this tenancy and to prevent the mother of the Tenant's child from continuing to create disturbances at the residential complex, I hereby Order the Tenant to provide the Landlord with a copy of the Court Order that prohibits the mother of the Tenant's child from being within 500 metres of the residential complex. This will assist the Landlord in having the individual removed from the complex if she is located on residential property.

I find that providing the Landlord with a copy of the aforementioned Court Order is a material term of this tenancy agreement. In the event that the Tenant does not provide the Landlord with a copy of the aforementioned Court Order, the Landlord may have grounds to end this tenancy pursuant to section 47(1)(h) of the *Act*.

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: July 20, 2010.

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Dispute Resolution Officer