



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel the One Month Notice to End Tenancy for Cause.

The tenant served the landlord in person on July 15, 2010 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

- Is the tenant entitled to cancel the Notice to End Tenancy?

### Background and Evidence

This tenancy started on February 02, 2006. The tenants rent for her unit at this time is \$619.00 per month and this is due on the first of each month. The tenant paid a security deposit of \$500.00, which is half the market rent for this unit, on February 02, 2006.

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It was determined that the weekend manager taped the Notice to the tenants' door on June 23 or 24, 2010 and she claims this was taken in by the tenant by 10.00 am that morning. The tenants' relation coordinator states the tenant was also sent this notice by registered mail on June 25, 2010 and was given a copy of the Notice by the administrative assistant on June 29, 2010. The tenant denies receiving any of these notices but states she did receive a fax copy some time later.

The tenant states she filed her application to dispute the Notice within 10 days of receiving the One Month Notice but could not find the paperwork to serve to the landlord so had to file another application at the Residential Tenancy Branch.

The landlords' agent states the tenant was served with the One Month Notice to end tenancy for two reasons. The first reason given on the Notice was 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. The second reason given on the Notice was that the tenant has engaged in an illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord.

The landlords' agents testify that a person visiting the tenant was outside her unit shouting, swearing and screaming. The police were called. At some point the tenant was seen running outside and when she returned to her unit she asked the landlords agent to say she was not there. When the police arrived they gained entry into her unit and could not find the tenant. The landlords witness states by this time the man causing the disturbance had left the area. When the police and landlords agent entered the tenants unit they found a broken window which had been broken from the inside.

When questioned, the landlords' agent agreed that the tenant has never been given a written warning before concerning any other incidents.

The landlords' agent states the tenant has engaged in an illegal activity with suspected drug use and he has concerns for the safety of his other tenants. The weekend manager states she received a phone call from an elderly neighbour of the tenants who informed her three men had knocked on her door looking for the tenant and the next day the tenant knocked on her door demanding money from her.

The executive director gave testimony that as no one had seen the tenant they entered her unit for a safety aspect and the door appeared to have been kicked in. It is a heavy fire door and great force must have been used to damage the door. The door was not locked and the tenants unit was not secure. The director states at this time she assumed the unit had been abandoned.

The tenant testifies that the man making all the noise was her brother who came to her unit intoxicated. She claims she tried to take care of him and he was rowdy. She states she asked him to leave. A neighbour also came in to try to get him to leave and this neighbour has written a supporting letter to this effect. The tenant states her brother broke the window. She claims he was not invited and she is the victim in this incident.

With regard to the three men turning up at her neighbours' door the tenant has no knowledge of this as she was not there at the time and suggests it may be in connection with her children's father who is into drugs however, she states she did not invite him and is not in a relationship with him. The tenant states she did ask the same neighbour to lend her a few dollars but she did not demand money from her. The tenant states she has not engaged in any illegal activities.

The tenants' witness who is her brother connected to the incident gave his testimony and states he was intoxicated and behaving in a belligerent manner when he went to the tenants unit. He takes full responsibility for the incident and the broken window. He claims he was not invited by the tenant and was an unwanted guest. He states he picked an argument because he was drunk and the tenant tried to get him to leave her unit.

The landlord has requested an Order of Possession.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

In this matter I find the tenant cannot be evicted when the person causing the disturbance was an uninvited person who the tenant attempted to get to leave. I further find in this incident that the tenant is the victim and her window was broken by her brother who admits full responsibility for this incident. With regard to the remainder of the landlords claim there is no evidence that the three men who approached the tenants' neighbor caused any harm, engaged in an illegal activity or that they were invited guests of the tenants particularly when the tenant was away at the time. The landlord did not call the tenants neighbor as a witness to provided affirmed testimony that the tenant demanded money from her or that this would be classed as an illegal act.



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Therefore In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

## Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated June 25, 2010 is cancelled and the tenancy will continue.

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: August 13, 2010.

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Dispute Resolution Officer