

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with a tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) to cancel the landlord's Notice to End Tenancy .

Both parties attended the hearing. The landlord testified that he posted the notice to end tenancy on the tenant's door on June 27, 2010. The tenant testified that she handed her application for dispute resolution package to the landlord on July 8, 2010. Both parties confirmed that they received these documents from one another. I am satisfied that the parties have served these documents in accordance with the *Act*.

The landlord testified that he sent a 14 page evidence package to the Residential Tenancy Branch (RTB) on August 22, 2010. The tenant and her advocate confirmed that they received this package of evidence from the landlord on August 24, 2010. Despite the late provision of this information, the tenant's advocate said that the tenant was willing to proceed with this hearing. The landlord's 14-page evidence package was not received by the RTB by the time of the hearing. I asked the landlord to re-send this information by fax as soon as possible. I received this written evidence from the landlord later that day and have considered it in reaching my decision.

At the hearing, the landlord requested an Order of Possession if the tenant's application for cancellation of the Notice to End Tenancy were dismissed.

### Issues(s) to be Decided

Is the tenant entitled to cancellation of the landlord's notice to end tenancy?

### Background and Evidence

The landlord testified that this month-to-month tenancy commenced on July 1, 2009. The tenant is paying \$336.00 in rent on the first of each month.

The landlord testified that the present application is the third attempt to end this tenancy considered by a Dispute Resolution Officer (DRO) of the RTB. He said that the first notice to end tenancy was dismissed because the tenant's name was misspelled. He testified that the second notice to end this tenancy was denied because the notice was not signed. He provided file numbers to reference each of these decisions by DROs.

In response to a suggestion by a previous DRO regarding this tenancy, the landlord said that an offer has been made by the landlord's board of directors to pay the equivalent of one month's rent to the tenant to assist her to move to another rental property. The tenant confirmed receipt of this offer but said that her present health condition prevents her from lifting boxes to prepare for such a move.

### Analysis

Section 47 of the *Act* establishes the grounds whereby a landlord can issue a One Month to End Tenancy for Cause. The landlord identified the following reasons for seeking an end to this tenancy pursuant to section 47(1) of the *Act*:

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *put the landlord's property at significant risk;*

*Tenant has engaged in 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;*

*Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so...*

The landlord bears the burden of proof in demonstrating that there are sufficient grounds to end a tenancy for cause under section 47(1).

Background and Evidence - Significant Interference with or Unreasonable Disturbance of Another Occupant or the Landlord

The landlord testified that the tenant has been very difficult in her interactions with the landlord's staff and with workers who have come to perform renovation work on her rental unit in accordance with a previous repair order issued by a DRO on March 24, 2010. He testified that the tenant's accusations regarding workers hired by the landlord to perform repairs on her rental suite significantly interfered with and unreasonably disturbed him and upset the workers. The landlord's representative testified that the tenant's unwelcome accusations about him and staff he has hired to perform repairs to her rental unit unreasonably disturb him and the workers he has hired.

He entered into evidence a letter from one of the tenant's neighbours complaining about the tenant's behaviour. No other letters from tenants were submitted into evidence. He said that he has received many oral complaints from other tenants in her building.

Analysis - Significant Interference with or Unreasonable Disturbance of Another Occupant or the Landlord

It is clear that the tenant and the staff member who appeared on behalf of the landlord are having difficulties in their interactions. However, the *Act* does not allow a landlord to end a tenancy because the landlord's staff find a tenant's behaviours and requests annoying or demanding. Although the landlord presented written evidence from the workers who found the tenant's accusations objectionable, they did not testify at the hearing. No other tenants were presented by the landlord as witnesses attesting to the landlord's allegation that many tenants have complaints about this tenant.

I am not satisfied by the evidence that the landlord has demonstrated that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord to the extent necessary to obtain an end to this tenancy. I dismiss the landlord's application to end this tenancy for cause on the basis of significant interference with or unreasonable disturbance of another occupant or the landlord.

#### Background and Evidence - Landlord's Property at Significant Risk

The landlord entered sworn testimony that the tenant was placing the landlord's property at risk because of hoarding in the attic, the crawl space and in the tenant's rental premises near the exit doors. The tenant said that she had removed the material in question to the crawl space, an area which is seldom if ever accessed. The landlord testified that the tenant had changed locks without first obtaining the landlord's permission. However, the tenant provided undisputed testimony that she had provided the landlord with copies of keys to the locks requested. The landlord testified that the tenant cut off a one inch portion of the bottom of the bathroom door in the rental premises without first obtaining the landlord's permission so that she could allow a carpet to fit under that door. The tenant confirmed that she had not received the landlord's permission to cut a one-quarter inch portion of the door to allow the door to close properly under the carpet. The landlord said that there was a safety risk to the rental premises presented by the tenant's removal of the fire extinguisher from its secure position on the wall to a position on the floor of her rental premises. He also raised concerns about the time that it took the tenant to remove a cabinet that she had stacked on top of another cabinet.

#### Analysis - Landlord's Property at Significant Risk

The landlord has not submitted any photographs to support the claim that the tenant's hoarding presents a significant risk to the landlord's property. Many of the other issues appear to have occurred some time ago, most of which have led to an element of corrective action by the tenant. There is no evidence that the fire extinguisher has been removed from the rental premises; the issue appears to be the location of the fire extinguisher. While the tenant admits to cutting a small portion of one of the landlord's

doors to allow the door to close properly under a carpet, I am not satisfied that this activity presents a significant risk to the landlord's property to the extent that a notice to end tenancy for cause should be issued.

I dismiss this portion of the landlord's application for a notice to end tenancy for cause because I am not satisfied that the landlord has demonstrated that the tenant's actions present a significant risk to the landlord's property.

#### Analysis - Illegal Activity

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offence under the *Criminal Code of Canada*. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property. The party alleging the illegal activity has the burden of proving that the activity was illegal. The landlord did not provide evidence to demonstrate that the tenant was involved in any form of illegal activity. I dismiss the landlord's claim that the tenant's illegal activity has adversely affected the quiet enjoyment, security safety or physical well-being.

#### Background and Evidence - Breach of a Material Term of the Tenancy Agreement

The landlord identified a number of concerns about the tenant's actions in her rental premises that he maintained were breaches of a material term of her tenancy agreement (e.g., the positioning of a fire extinguisher within her rental premises, the stacking of two cabinets on top of one another in her rental premises).

#### Analysis - Breach of a Material Term of the Tenancy Agreement

A landlord may end a tenancy for breach of a material term but the standard of proof is high. It is necessary to prove that there has been a significant interference with the use of the premises. To determine the materiality of a term, a DRO will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case

the landlord, to present evidence and argument that the term was a material term. A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. The question of whether or not a term is material must be determined in every case in respect of the facts and circumstances surrounding the creation of the tenancy agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another.

I am not satisfied that the landlord has identified anything that qualifies as the tenant's breach of a material term of her tenancy agreement. I dismiss the landlord's application that the tenant has breached a material term of her tenancy agreement.

### Conclusion

The tenant's application for cancellation of the Notice to End Tenancy is allowed. The One Month Notice to End Tenancy for Cause is set aside and this tenancy shall 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*.