# Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

## Decision

**Dispute Codes**:

CNC

**Introduction**

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated August 21, 2010. Both parties appeared and gave testimony in turn.

No copy of the One-Month Notice to Notice to End Tenancy for Cause was submitted into evidence. However, the parties testified that the Notice indicated that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord and that the tenant had breached a material term of the tenancy and failed to correct the situation within a reasonable time after being given written notice to do so.

**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 is whether the criteria to support a One-Month Notice to End Tenancy under section 47of 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**

The landlord testified that the tenant was in violation of a dispute resolution decision dated August 13, 2003, a copy of which was in evidence. According to the landlord, the earlier decision restricted the tenant to owning only 2 cats and the tenant has failed to comply by now having 3 cats. The landlord testified that the tenant has also improperly utilized her parking spot to store a derelict car that is an eyesore and does not run. The landlord testified that this vehicle has not been used for transit for approximately 2 years, has an expired license, a flat tire, obvious damage and is clearly immobile as evidenced by the debris accumulated beneath it. The landlord testified that it has received complaints from other residents in the building who object to the car

being allowed to remain the parking lot. The landlord stated that the car is not insured for driving and was insured for storage only.

The landlord acknowledged that there was no term in the tenancy agreement prohibiting or even restricting the storage of vehicles, but felt that it was implied that parking spots were not to be used to store non-road-worthy vehicles beyond a reasonable amount of time for them to get repaired. The landlord stated that, in this case, the tenant had been afforded over two years to rectify the problem.

The tenant testified that she was entitled under her tenancy agreement to keep up to 8 cats. The tenant also vigorously objected to the landlord's position regarding her car and pointed out that the landlord has no legal nor contractual right to dictate conditions in regards to the state of repair of the car, whether or not it could be driven and the tenant's personal choices in regards to the vehicle in question. The tenant's position was that the One-Month Notices from the landlord have no basis and should be dismissed.

**Analysis**

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) *[determining disputes]*.

Section 58 of the Act states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of: (a) rights, obligations and prohibitions under this Act; (b) rights and obligations under the terms of a tenancy agreement that (i) are required or prohibited under this Act, or; (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities.

In regards to the landlord's assertion that the tenancy should be ended because the tenant failed to comply with a previous decision or order dated August 13, 2003, I find that there was no finding made that there an enforceable term in the tenancy agreement restricted the tenant to ownership of not more than 2 cats in the unit. The Dispute Resolution Officer determined that the landlord's Notice would be set aside if the tenant agreed to only keep 2 cats and rid the rental unit of the cat odours.

For the purpose of ending a tenancy for a breach of a material term in the tenancy agreement under section 47(1)(H) of the Act, I find the applicant must show that three components exist:

1. There must be a clear term contained in the tenancy agreement

2. This term must fit the definition of being "material"

3. There must be a genuine breach of the material term.

From the testimony and evidence of both parties I find that there no term in the tenancy agreement existed to restrict the number of cats nor restrict or prohibit unsightly and non-functioning vehicles from occupying a tenant's parking space.

In regards to ending a tenancy for significantly interfering with or unreasonably disturbing another occupant or landlord, I find that the threshold under section 47(1)(d)(i) is high. The disturbance or interference must be sufficient to significantly impinge on other resident's quality of life and their right to quiet enjoyment of their rental unit or common areas.

I find that, while it may be a fact that or more residents in the complex are bothered by the sight of the tenant's car and feel that this would qualify as interference or a disturbance, there is no specific provision in the Act requiring a tenant to protect the aesthetic integrity of the premises. Unless the condition created by the tenant poses a danger ,constitutes a health hazard or otherwise affects the use and enjoyment of other residents it could not be a basis for ending the tenancy.

I find insufficient evidence to prove that the One-Month Notice to End Tenancy was warranted and I find it must be cancelled.

The parties engaged in a mediated discussion and agreed that on or before November 15, 2010, the tenant's car would be moved at no cost to a less visible parking location on the premises. The moving may be done by the tenant with help or by the landlord using a tow truck. The new parking spot will not block access for the car to be operated and the tenant's current parking spot will still be reserved for the tenant's future use.

## Conclusion

Based on the above, I hereby order that the One-Month Notice to End Tenancy of August 29, 2010 be cancelled and of no force nor effect.

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*.