



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute codes

CNC, OLC, MDC, FF

### Introduction

This hearing was convened in response to an application filed by the tenant on November 03, 2010 cancel a 1 Month Notice to End Tenancy for Cause (the Notice to End) dated October 29, 2010, with the reasons as:

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

- *Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*
- *Put the landlord's property at significant risk*

For this type of application, the onus is on the landlord to prove the Notice to End was issued for *sufficient* reasons. The landlord is not required to prove all reasons stipulated for ending the tenancy. However, in order for the Notice to be valid, at least one reason must constitute *sufficient* cause.

The tenant also applies for a monetary order for damage or loss in relation to loss of quiet enjoyment, cleaning after renovations, inconvenience from the renovations, and alleged unreasonable intrusion by contractors due to landlord's lack of oversight of renovations and stress due to the landlord's issuance of the Notice to End – should I determine it to be without sufficient grounds, or that it is, "vexatious".

The tenant's amended application of *relevant and compensable claims* is as follows:

Loss of quiet enjoyment x 10 days @ 38/day	\$380.00
Cleaning 12 hrs. @ \$20/hr.	\$240.00
Penalty for lack of landlord's oversight	\$200.00
Harassment and stress	\$500.00
Filing fee	\$50.00
<b>Total compensable claim request</b>	<b>\$1370.00</b>

Both the tenant and the landlord appeared in the conference call and each participated in the hearing via submissions and affirmed / sworn testimony. Both parties were given

a full opportunity to present relevant evidence and make relevant submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

At the outset of the hearing the landlord verbally requested an Order of Possession, should I uphold the landlord's Notice to End.

**Issue(s) to be decided**

Does the landlord have evidence of *sufficient* cause to end the tenancy?

Is the landlord entitled to an Order of Possession?

Is the tenant entitled to the monetary amounts claimed?

**Background and evidence**

This tenancy began in 2006. The tenant occupies the upper portion of a house owned by the landlord. The landlord does not occupy the residential property and is at least three (3) municipalities away. The residential property contains an additional suite in the lower portion of the house. Rent is \$1180 per month inclusive of utilities (\$1078 for rent).

The landlord and tenant agree that a quantum of renovations were being conducted in the residential property at the start of October 2010, and that some of those renovations involved painting and access of the tenant's suite. The landlord claims that on October 21, 2010 she and her husband attended at the rental unit. The landlord claims that the tenant was agitated and spoke loudly to the husband – the tenant was yelling and was intimidating toward the husband and the husband was "traumatized" by the incident. The landlord testified that as a result she felt threatened and fearful of the tenant, and that the incident caused her husband to attend the hospital the next day due to the stress of the incident. The husband did not attend the hearing to provide testimony.

The tenant testified that he had communicated with the husband in the previous week of the incident and had alerted the landlord that the contractors conduct and presence in his rental unit was intrusive and inappropriate, and that the husband downplayed the tenant's concerns and seemed to scoff at the tenant's concerns and request for compensation for loss of quiet enjoyment. The tenant alleges the husband threatened the tenant with the possibility of eviction. The tenant disputes that he himself was threatening toward the landlord or that he was intimidating, but that the incident did become heated and that voices were elevated. The tenant testified that the incident did not result in physical contact between the parties or that police were involved, but that as a result, they agreed to a cooling off period of one week. The tenant testified he was surprised to then receive a Notice to End for Cause.

The landlord also submitted that the tenant stores gasoline on the residential property and provided a photograph of the underneath of the back porch in which it shows a gas lawnmower and several common gas containers.

The tenant testified that he stores the approved gas containers outdoors, as prescribed and that they are for his boat, and that they are empty and stored safely.

The landlord also submitted evidence in respect to police callouts since 2006 – sixteen (16) - which the landlord suggested were the result of the tenant's conduct in some way, but is not sure as she does not reside on the property and there is another suite in the house which has been occupied by eight (8) tenants since 2006 – the applicant being the only stable tenancy.

The tenant explained that he was involved in three (3) of the police callouts over the 4 years – none of which involved the landlord or the other tenants and were the result of property issues.

The tenant testified that as a result of the renovations and the presence of contractors in the house he incurred 10 days of inconvenience for the protracted work in the house. Tenant claims that he had to "tolerate" an abundance of dust from remediation of the flooring, painting, garbage, smoking by the contractors in the house (non-smoking house), use of the tenant's bathroom when a vacant suite was available, screws and nails on the property, and intrusive behaviour of the contractors. The tenant described the contractors as lacking consideration for him and his home, and that the landlord provided no oversight to prevent intrusion to his quiet enjoyment – for which the tenant is claiming a penalty for their lack of oversight. The tenant states he also had to expend 12 hours of cleaning after the renovations for which he claims compensation.

The landlord testified that she agrees that the tenant was inconvenienced and was prepared to compensate the tenant before the incident of October 21, 2010. The landlord had also planned on cleaning prior to the incident of October 21, 2010.

### **Analysis**

The testimony of the tenant and the landlord, clearly, is that the tenancy relationship has suffered a serious setback and that the incident of October 21, 2010 was a stressful turning point for both parties. However, despite the landlord's assertions that she no longer wants the tenant in her house, I find that the incident of October 21, 2010 and the storage of gas containers outdoors does not constitute *sufficient* cause to terminate the tenancy. The landlord has not provided sufficient evidence of a reason to support her claim that the applicant tenant has seriously jeopardized the landlord or proven that the applicant tenant has placed the landlord's property at *significant* risk. As a result, **the Notice to End dated October 29, 2010 is set aside and is of no effect**, and the tenancy continues.

As to the tenant's monetary claims: on the preponderance of the evidence, inclusive of the testimony by both parties, I prefer the tenant's evidence that he is entitled to a reasonable amount for loss of quiet enjoyment. I set that amount at **\$250**, without leave to reapply. I further find, on the balance of probabilities, that the tenant had to

clean his rental unit after renovations on the residential property and that the tenant is entitled to a reasonable amount for cleaning. I grant the tenant **\$150** for cleaning, without leave to reapply.

While I have found that the landlord's Notice to End was issued without *sufficient* cause, I do not accept the submission of the tenant they are entitled to \$500 compensation for intentional harassment or that the Notice to End was aimed at unduly annoying the tenant. I accept the landlord's Notice to End as an attempt to stem the spiral of conflict between the parties. As a result, the tenant's claim respecting aggravated damages for a Vexatious Notice to End is **dismissed** without leave to reapply.

Regarding the tenant's claim for what amounts to punitive damages for the landlord's purported lack of oversight of the renovations - I do not have the authority to award punitive damages in order to penalize the respondent and therefore this claim is **dismissed** without leave to reapply.

As the tenant has been successful in their application, the tenant is entitled to recovery of the filing fee in the amount of **\$50**. The tenant's total entitlement is for **\$450**.

### **Conclusion**

The landlord's Notice to end is set aside and is of no effect.

The landlord's request for an Order of Possession is denied.

I order that the tenant may deduct **\$450** of a future rent in full satisfaction of their monetary award.

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*.