



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

CNC

### Introduction

The tenant has applied to cancel a Notice issued ending the tenancy for cause.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

### Preliminary Matter

Neither party submitted a copy of the Notice ending tenancy. The landlord did provide a copy of the 2<sup>nd</sup> page. The Notice was reviewed during the hearing and agreement was obtained from both parties as to the content of the Notice. The tenant was asked to submit a complete copy of the Notice to the Residential Tenancy Branch.

### Issue(s) to be Decided

Should the Notice ending tenancy issued on October 26, 2010, be cancelled?

### Background and Evidence

The landlord and the tenant agreed that a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenants were required to vacate the rental unit on November 30, 2010. The reasons stated for the Notice to End Tenancy were that the tenant has seriously jeopardized the health, safety or lawful interest of another occupant or the landlord.

The landlord presented the following evidence and arguments to support the Notice to End Tenancy for Cause:

- On August 6, 2010 the tenant was given written warning the litter tray needed to be cleaned that she must pick up after her dog;
- That no contact in relation to problems with the tenancy was made between August 6 and October 25, 2010;
- On October 25, 2010 the upstairs tenants complained of the small of the lower tenant's litter box;
- That on October 26 the landlord was allowed into the tenant's rental unit to inspect and that he determined the unit was unclean, dirty and smelled;
- That the tenant told the landlord that her unit was in an acceptable state; and
- That a Notice ending tenancy was given to the tenant on October 26, 2010.

The tenant presented the following evidence and arguments in support the application to cancel the Notice to End Tenancy for Cause:

- That the letter given on August 6, 2010, was in relation to the outside sand box;
- That the upstairs tenants have 3 cats;
- That she does not take her dog to the side of the building as the 2 dogs owned by the upstairs tenants leave a mess in that yard and it is not cleaned up;
- That she allowed the landlord into her unit on October 26 and the landlord determined her unit was not in keeping with his personal standards;
- That she regularly cleans her cat's litter box and that her unit is reasonably clean.

The landlord denied that the upstairs tenants have 3 cats and stated that the tenant has jeopardized the health of those tenants due to the unclean state of her unit.

The tenant provided photographs taken of her rental unit on October 26, 2010, after she received the Notice.

### 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 significantly affected the health, safety or lawful interest of the landlord. During the hearing I explained my reasons to the parties.

In determining whether this tenancy should end, I gave extensive consideration to the lack of any evidence that supported the claim that the health of the upstairs tenants has been impacted. The landlord entered the tenant's unit, did not provide her with any opportunity to respond to his concern and on the same date of the inspection issued a Notice ending the tenancy for cause. Further, there is no evidence before me that any breach of the Act by the tenant has occurred.

As the landlord has the burden of proving the reasons indicated on the Notice and he has failed to do so, I found that the Notice was of no force or effect and that the tenancy would continue until it is ended as provided by the Act.

I also based my decision on section 32 of the Act, which provides, in part:

*(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

The photographs submitted by the tenant showed a rental unit that I find was in a reasonable state of cleanliness.

During the hearing the tenant did agree that the litter box can be cleaned on a daily basis.

### Conclusion

As I have determined that the landlord has submitted insufficient evidence to establish that he has grounds to end this tenancy pursuant to section 47 of the Act, I hereby set aside the One Month Notice to End Tenancy, dated October 26, 2010, and I order that this tenancy continue until it is ended in accordance with the Act.

I have enclosed a copy of the *Guide for Landlords and Tenants in British Columbia*, for reference by each party.

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: November 24, 2010.

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Dispute Resolution Officer