



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, OPR, OPC, FF

### Introduction

This was a hearing conducted at the Residential Tenancy Office in Burnaby to hear the tenant's application to cancel a Notice to End Tenancy. The hearing began on June 30, 2010. It was adjourned and continued on September 3, 2010 because there was insufficient time to conclude the hearing on June 30, 2010. It was also adjourned to allow the parties to submit additional evidence. The landlord in particular claimed to have relevant evidence to present, however he did not submit any additional evidence. The landlord filed his own application for dispute resolution on August 4, 2010. He sought an order for possession pursuant to a Notice to End Tenancy for unpaid rent. The landlord and the tenant as well as the other named individuals participated in the hearing.

### Issues(s) to be Decided

Should the Notice to End Tenancy for cause be cancelled?

Is the landlord entitled to an order for possession pursuant to the 10 day Notice to End Tenancy?

### Background and Evidence

The rental unit is a house in North Vancouver. The tenancy began in November, 2000. The landlord served the tenant with a one month Notice to End Tenancy for cause dated May 3, 2010. The Notice required the tenant to move out of the rental unit by June 1, 2010. The Notice alleged that the tenant is repeatedly late paying rent, that she

has significantly interfered with or unreasonably disturbed another occupant or the landlord and that she has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The landlord issued a 10 day Notice to End Tenancy on July 28, 2010. The Notice claimed that the tenant failed to pay rent in the amount of \$1,975.00 that was due on July 1, 2010. The tenant's cheque in payment of July rent was returned because the cheque was not signed. The tenant replaced the cheque on July 30, 2010. The new cheque was for the amount of \$3,950.00 and was in payment of July and August rent. Because the tenant paid the amount of rent claimed by the 10 day Notice to End Tenancy within five days of receiving it, the Notice was thereby cancelled. The landlord's application for an order for possession pursuant to the 10 day Notice is therefore dismissed.

With respect to the Notice to End Tenancy for cause dated May 3, 2010, the landlord testified that the tenant has several dogs and the tenant allows them to run loose. The landlord complained that the tenant had two large dogs and she allowed them to run loose. He also testified that the rental property was very dirty and the yard was filled with junk. The landlord said that he has requested the tenant to secure the dog when he intends to come to the property to do work or make repairs, but the tenant has refused to do so. He said that he is frightened of the tenant's dogs and he is allergic to them; they are large and one of them is a Rottweiler. The landlord accused the tenant of harassing him. He testified that she is constantly complaining and she is rude and abusive towards him. He said she complains about needed repairs but refuses to let his workmen into the rental unit to effect repairs.

The landlord also claimed that the tenant is repeatedly late paying rent.

The tenant disputed all of the landlord's claims. She denied being later with rent and said that she has never prevented the landlord from performing work on the property. She claimed that she has made many requests to have the landlord perform necessary

repairs and the work is not done, or if the landlord begins work it may take months to complete. She referred in particular to complaints about patio renovations and the mess that the landlord made. The tenant acknowledged that she has withheld rent in the past in order to get the landlord to make repairs or to finish them.

In her application for dispute resolution, the tenant requested a monetary order in addition to an order cancelling the Notice to End Tenancy. No monetary amount was stated in the application. The tenant requested a rent reduction. She claimed to be entitled to a rent reduction because the landlord was not cutting the lawn. She said that by agreement the landlord was responsible for lawn cutting. She claimed that the landlord damaged water and plant containers. She also claimed that the landlord overturned a five gallon pail of paint left on the sidewalk and watering cans when cutting the grass. She claimed various amounts including \$3,150.00 for loss of enjoyment of the yard for five years. According to her written submissions the tenant's monetary claims total more than \$8,000.00.

The tenant's neighbour and friend testified that the repairs to the patio and sundeck were handled very poorly by the landlord. There was construction debris scattered around; it was unsightly and unsafe and dragged on for several weeks. She said that she has visited the tenant in the rental unit and there are other repairs in the bathroom particularly that have not been dealt with.

### Analysis and conclusion

The burden of proving that there is sufficient cause to justify ending a tenancy rests with the landlord. The landlord has claimed repeated late payment of rent but he has produced no receipts, ledgers or deposit records to support his claim. Similarly he claimed that the house was dirty and there was a great deal of the tenant's junk lying about. He provided no photographic evidence to support his claim.

The landlord complained about the tenant's dogs. I heard evidence that one of the tenant's dog has died and currently she has only one dog. At the previous hearing the landlord told me there were records that would show the tenant had been warned by the City about letting her dogs running loose. The landlord did not submit the promised evidence. I am unable to find, on a balance of probabilities, that the tenant has failed to control her dogs and this failure justifies ending the tenancy.

I find that the landlord has failed to show on a balance of probabilities that there is sufficient cause to uphold the one month Notice to End Tenancy. I order that the notice be, and is hereby cancelled. The tenancy will continue.

I mention to the parties that I have not made a finding that the circumstances and events that the landlord complains of did not occur; I have only decided that the landlord has not proven his case that there is cause on a balance of probabilities. It is open to the landlord to serve a further Notice to End Tenancy, but he must be prepared to present convincing evidence that there is a proper basis for the Notice to End Tenancy.

What is evident is the degree of animosity that is present between the tenant and the landlord. The overt hostility between the parties, particularly as expressed by the tenant towards the landlord has rendered communication a near impossibility; unless the parties can re-establish a more courteous relationship this tenancy will ultimately end in ruin.

Turning to the tenant's claim for a rent reduction and a monetary order, the tenant included as evidence an itemization of a monetary claim totalling some \$8,600.00, but she failed to specify any monetary claim as part of her application. The tenant claimed more than \$4,000.00 for loss of use of the patio and sundeck. Part of her claim relates to loss of use of the yard. She claimed that the lawn has not been cut and this has prevented her from using the yard over the course of the tenancy. She requested \$3,150.00 on this account.

The tenant's application for dispute resolution did not include these claims and did not make a request for a monetary order in the amount stated, or in any amount. The landlord was not put on notice that he needed to address these claims and I decline to rule on them. The tenant may file a proper form of application for dispute resolution giving particulars of these claims and the amounts requested if she intends to pursue them. The tenant is entitled to recover the \$50.00 filing fee for her application. She may deduct the said amount from a future instalment of rent.

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*.