



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes**      CNC, FF, O

### **Introduction**

This hearing was convened by way of conference call to deal with the tenant's application for an order cancelling a notice to end tenancy for cause and to recover the filing fee from the landlord for the cost of this application.

The tenant attended the hearing, and the landlord company was represented by 3 agents, one being the resident manager and another being the property administrator. The parties all gave affirmed testimony and the parties were given an opportunity to cross examine each other and the witnesses on their evidence.

All testimony and information provided has been reviewed and is considered in this Decision.

### **Issues(s) to be Decided**

Is the tenant entitled to an order cancelling a notice to end tenancy for cause?

### **Background and Evidence**

This month-to-month tenancy began on May 14, 2004 and the tenant still resides in the rental unit. Rent in the amount of \$623.00 is payable in advance on the 1<sup>st</sup> day of each month, and there are no rental arrears. On May 11, 2004, the landlord collected a security deposit from the tenant in the amount of \$250.00.

The resident manager testified that early in June, 2010 she heard dogs barking and other tenants had complained. She also saw the dogs on the balcony of the rental unit, as well as in the hallway. She gave the tenant a letter saying that a pet deposit in the amount of \$304.00 had to be paid or the dogs had to move out of the rental unit by June 30, 2010. She stated that the tenant spoke to her stating that the dogs belonged to his daughter and he wasn't paying the pet deposit.

She also testified that she asked the property administrator to issue another letter from head office. That letter was issued July 15, 2010 and quoted paragraph 18 of the tenancy agreement. The letter stated that the tenant had 2 dogs that were not pre-authorized by the landlord and that the pet deposit of \$302.00 must be paid or the pets had to be removed from the rental unit.

She further testified that she saw the tenant again after he had received the letter and he told her he had spoken to the landlord who told him there was no difference between a security deposit and a pet damage deposit. She replied that everyone has to pay the pet damage deposit if they have a pet. She further testified that other tenants told her they did not hear the dogs after September 28, 2010.

She further testified that other tenants had complained about party noise, a lot of traffic going to and from the unit, and someone was smoking marijuana on the deck.

The property administrator testified that she had been asked by the resident manager to write a letter to the tenant about the pet damage deposit, and she did so on July 15, 2010 and sent it by regular mail. The tenant called her, and she returned his call on September 28, 2010. He stated that the dogs were gone and had been for about 3 weeks.

She also testified that she had received an email from another tenant who is allergic to smoke and stated that he could smell pot in the hallway. Another tenant emailed who worked night shift and was not able to sleep because of parties and dogs barking. The Addendum to the tenancy agreement states that the tenant agrees not to perform any illegal activities, and that the premises shall be used exclusively as the private

residence of the tenant and other persons named in the agreement. When questioned about the complaint from the tenant who is allergic to smoke, she stated that this tenant believed it was a no smoking building. A copy of the tenancy agreement was not provided in advance of the hearing however the witness stated that at the time this tenant moved into the rental unit, there were no restrictions with respect to smoking. Also, when questioned about the complaint by another tenant who works night shift, the landlord's witnesses were unable to explain whether the parties and barking dogs were during the day or at night while the tenant was at work.

The landlord issued a 1 Month Notice to End Tenancy for Cause on September 28, 2010. A copy of that notice was provided in advance of the hearing, and it states an effective vacancy date of October 31, 2010 and that, "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord," and, "security or pet damage deposit was not paid within 30 days as required by the tenancy agreement."

The tenant testified that there is no partying at night in his rental unit. He works 12 hour days and is up at 4:00 a.m. He stated that his wife and son were on the tenancy agreement at the outset of the tenancy, and they live with him now.

The tenant further testified that the dogs belonged to his ex-girlfriend's daughter. He stated that he told her to pay the pet deposit, but she didn't. The dogs were gone by September 13, 2010, except that they were there for a few hours on September 20, 2010.

The tenant also testified that 15 or 20 other tenants smoke pot in the building, including the tenants across the hall from this rental unit.

### **Analysis**

Firstly, dealing with the landlord's claim that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, I find that the landlord's agents have failed to

establish the disturbances. The landlord could not provide dates as to disturbances or answer questions to establish those disturbances other than to say that they received emails. One of those emails was from a tenant who believed it to be a no-smoking building, but it clearly wasn't when this tenant moved into the unit, and still is not. The other was an email from another tenant stating that he couldn't sleep, but the landlord did not know whether the tenant was trying to sleep during the day or at night, or when the partying occurred.

Further, with respect to the pet issue, I find that the tenant did not want to pay a pet damage deposit for his ex-girlfriend's daughter, and he therefore had the pets removed prior to the issuance of the 1 Month Notice to End Tenancy for Cause.

### **Conclusion**

For the reasons set out above, the tenant's application to cancel the notice to end tenancy is hereby allowed. The 1 Month Notice to End Tenancy for Cause is hereby cancelled.

I further order that the tenant be permitted to deduct \$50.00 from a future rental payment for the cost of filing this application.

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 15, 2010.

---

Dispute Resolution Officer