



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, OLC

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause, to have the Landlord comply with the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Tenant said he served the Landlords with the Application and Notice of Hearing (the “hearing package”) by personal delivery November 18, 2010. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?

### Background and Evidence

This tenancy started in March 15, 2009 as a month to month tenancy. Rent is \$850.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$425.00 prior to March 15, 2009.

The Landlord said he issued a 1 Month Notice to End Tenancy for Cause dated November 2, 2010 for two reasons. The Landlord said the first reason was that the Tenant has parked a truck camper in the parking area of the rental building and it is restricting access to other parking spaces and it presents a safety hazard. The Landlord said the camper is a safety hazard because it is on blocks and could fall over and injure someone. The Landlord said he has asked the Tenant to move the camper 5 times since September 2010. The Tenant said he has been unable to move the camper as he doesn’t have a truck and he has been unable to borrow a truck to move it. The Tenant said he can move the camper to his father place when he gets use of a truck. The Landlord said he offered to help the Tenant move the camper in October, but the Tenant and the Landlord had a disagreement about moving it and as a result the camper did not get moved. The Landlord said the Tenant used foul language towards him.

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The Landlord continued to say that the second reason for the Notice to End Tenancy was that the Tenant had more people in the rental unit than were indicated on the tenancy agreement. The Landlord said he believes there is one more girl in the unit than indicated in the tenancy agreement.. The Tenant said that the forth person in the unit is his oldest daughter and she has been in the unit since they moved in. The Tenant said that he occupies the unit with his wife and two young daughters. The Tenant said he has family and friends come to the unit to baby sit, but they do not live in the unit.

The Landlord continued to say that the other tenants in the building have complained to him about the camper being parked in the parking area. The Landlord said he did not have any written statements from the other tenants and they did not want to testify as witnesses as the Landlord said they did not want to get involved in the dispute. The Tenant said he spoke with all the other tenants when he brought the camper into the parking area and the Tenant said the other tenants said it was fine with them as they didn't have cars and didn't use the parking area. The Tenant said he has had no complaints from the other tenants about the camper. The Tenant did not have any written evidence or witnesses that would corroborate his statements. The Tenant continued to say that the camper is very stable on the blocks and it presents no safety hazard of falling over.

The Tenant said that he is using the parking space that comes with his rental unit to park the camper and he parks his car on the street. He continued to say it does not block access and does not create a safety hazard.

The Landlord asked for an Order of Possession during the hearing if the Tenant's application to cancel the Notice to End Tenancy is not successful.

## Analysis

The Landlord's Notice to End Tenancy for Cause is pursuant to Section 47 of the Act which says a landlord may end a tenancy by giving a notice to end tenancy if the tenant has an unreasonable number of occupants in the unit, unreasonably disturbs other tenants or the landlord, puts the landlord property at risk, breaches a material term of the tenancy agreement or the tenant has assigned or sublet the unit without the Landlord's consent.

I find that the Tenant does not have an unreasonable number of people living in the unit, the tenancy agreement shows three occupants, but the addition of an additional child does not constitute an unreasonable number of occupants in the unit.

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There is much contradictory evidence and testimony regarding the camper in the parking area. Neither the Landlord nor the Tenant has provided corroborate evidence or testimony from a witness or a written witness statement that would establish proof of their claims. The testimony is basically the Landlord's word against the Tenant's word. The he burden of proving a claim lies with the Landlord in this case as he issued the Notice to End Tenancy for Cause and when it is just the Landlord's word against that of the Tenant's word that burden of proof is not met. I find that the Landlord has not established grounds to end the tenancy for cause. The tenancy will continue as per the tenancy agreement.

In addition as the Tenant has been successful in this matter I order that the Tenant to recover the filing fee for this proceeding of \$50.00 by subtracting it from the next month rent. The tenant will pay \$850.00 less \$50.00 = \$800.00 for the next rent payment instead of the full rental amount of \$850.00.

## Conclusion

The Landlord's section 47, 1 Month Notice to End Tenancy for Cause dated November 2, 2010 is hereby cancelled and this tenancy continues.

I order the Tenant's next rent payment to be reduced to \$800.00 so the Tenant can recover the \$50.00 filing fee for this proceeding.

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*.

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