



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

CNC, CNR

### Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and to set aside a Notice to End Tenancy for Unpaid Rent.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make submissions to me.

At the outset of the hearing the Landlord stated that she filed an Application for Dispute Resolution on December 09, 2010, which she had not yet served on the Tenant. In the Application for Dispute Resolution the Landlord made application for an Order of Possession for Unpaid Rent, an Order of Possession for Cause, and a monetary Order for unpaid rent of \$1,303.36, and to recover the filing fee for the cost of filing her Application for Dispute Resolution. The Landlord stated that her dispute resolution proceeding is scheduled for January 05, 2011.

Section 73(1) of the *Act* authorizes me hear disputes at the same time if they relate to similar disputes with the same parties. I find that the Landlord's Application for Dispute Resolution and the Tenant's Application for Dispute Resolution relate to the same issues and I therefore determine that they should be heard at this hearing. I make this determination even though the Landlord has not served her Application on the Tenant, as the Tenant would be presenting the essentially identical evidence at each hearing, and I do not find that it will be unfair to the Tenant or the Landlord to join the matters.

### Issue(s) to be Decided

The issues to be decided are whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)* and the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Act*, should be enforced; whether the Landlord is entitled to a monetary Order for unpaid rent; and whether the Landlord is entitled to recover the fee for filing her Application for Dispute Resolution.

### Background and Evidence

The Landlord and the Tenant agree that they entered into a written tenancy agreement, which was not submitted in evidence. The parties agree that the tenancy agreement gave the Tenant the right to occupy bedroom #1 and to share the kitchen, bathroom, and other common areas with people who rent other bedrooms in this residential complex. The parties agree that the tenancy agreement required the Tenant to pay rent of \$575.00 on the first day of each month.

The Landlord and the Tenant agree that the tenancy was officially to begin on July 01, 2010 but that the Tenant moved into the rental unit on June 23, 2010. The Landlord stated that the Tenant was required to pay \$153.36 in rent for the period between June 23, 2010 and June 30, 2010, although this payment was not outlined in their tenancy agreement. The Tenant stated that he understood he was able to move into the bedroom early because the room was vacant, and that he would not have to pay rent for any portion of the month of June.

The Tenant stated that he was not advised that he had to pay rent for June for approximately three months, at which time he received written notification from the Landlord that rent from June was due. The Landlord agrees that she did not provide the Tenant with written notice that he would be required to pay rent for June until sometime after the tenancy began, although she does not recall when she gave him the notice.

The Landlord stated that she believes the Tenant was using bedroom #2 in this shared residential complex during October and November, which was not rented to a third party during those months. The Landlord and one of the male witnesses both stated that they observed clothing, which they believed were the Tenant's, in bedroom #2. The Landlord stated that the Tenant does not have a tenancy agreement for bedroom #2 but she believes he should pay rent for the room because he was using it.

The Tenant stated that he did not use bedroom #2; that he does not have clothes in the bedroom; although he does have clothes in an upstairs hall closet.

The Landlord and the Tenant agree that the Tenant has paid all of the rent owing for bedroom #1 between July 01, 2010 and December 31, 2010.

The Landlord and the Tenant agree that the Tenant was personally served with a Ten Day Notice for Unpaid Rent and a One Month Notice to End Tenancy for Cause on November 20, 2010, which were disputed by the Tenant on November 22, 2010.

The Notice to End Tenancy for Cause indicated that the Tenant was required to vacate the rental unit on December 20, 2010. The reasons stated for the Notice to End Tenancy were that the Tenant has allowed an unreasonable number of occupants in the unit; 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; that the Tenant or a person permitted on the property by the Tenant has seriously

jeopardized the health or safety or lawful interest of another occupant or the landlord; that the Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk; that the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant; and that the Tenant has engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the landlord.

In support of her allegation that the Tenant has allowed an unreasonable number of occupants in the unit; that the Tenant or a person permitted on the property, the Landlord contends that the Tenant brings too many guests to the rental unit; that he frequently has a female stay overnight; and that he allowed his son to live at the rental unit in June and July. Two of the witnesses for the Landlord stated that they have observed people in the Tenant's bedrooms, some of whom are women, although they do not know the identity of the people.

The Tenant stated that his son did visit him at the rental unit in June or July but he did not live there until September, at which time he rented room #4.

In support of her allegation that the Tenant or his guest has significantly interfered with or unreasonably disturbed another occupant or the landlord; that the Tenant or his guest has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; and that the Tenant or his guest has put the Landlord's property at significant risk, the Landlord contends that the persons who visit him are disturbing others because they often fight, yell and scream while they are visiting. She submitted no evidence to corroborate this allegation.

The Tenant denied the allegations that his guests frequently fight, yell, and scream.

In support of her allegation that the Tenant or his guest has significantly interfered with or unreasonably disturbed another occupant or the landlord; that the Tenant or his guest has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; and that the Tenant or his guest has put the Landlord's property at significant risk, the Landlord contends that the Tenant is attempting to prevent her from renting out bedroom #2. She stated that he threatens that he and the other occupants will move out if she rents out the fourth bedroom. She stated that he has blocked her access to bedroom #2 when she attempted to view it.

The Tenant acknowledged that he has advised the Landlord that he and the other occupants do not want her to rent out bedroom #2, as the common areas are too small to accommodate a fourth tenant. He acknowledged that he did attempt to prevent her from accessing bedroom #2 on one occasion when she entered the residential complex without prior notice at 10:30 p.m.

In support of her allegation that the Tenant has engaged in illegal activity, the Landlord contends that the Tenant has brought female sex trade workers to the residential complex. She stated that she based this conclusion on information provided to her from

another occupant of the residential complex, who advised her that guests of the Tenant's were sex trade workers. Two of the witnesses for the Landlord stated that they have observed people in the Tenant's bedrooms, some of whom are women, although they do not know the identity of the people.

The Tenant denies bringing sex trade workers to the residential complex and states that the Landlord has accused his girlfriend of being a sex trade worker.

### Analysis

I find that the Landlord and the Tenant entered into a tenancy agreement that required to Tenant to pay monthly rent of \$575.00 in exchange for the right to occupy bedroom #1 in this residential complex.

There is a general legal principle that places the burden of proving that damage occurred or the money is owed on the person who is claiming compensation, not on the person who is denying the damage or the claim that money is owed. In regards to the amount of rent that is payable, the burden of proof rests with the Landlord.

I find that the Landlord has submitted insufficient evidence to show that the Tenant was required to pay rent for the period between June 23, 2010 and June 30, 2010. In reaching this conclusion I was heavily influenced by the Tenant's statement that he was never advised that he would be required to pay rent for this period; by the Landlord's acknowledgement that the written tenancy agreement did not require a payment for this period; and by the lack of any evidence that shows the Tenant agreed to pay for this period prior to the tenancy beginning. After considering all those factors, I find it entirely possible that the Tenant was allowed to move in early, without charge, as a good will gesture. On this basis, I cannot conclude that the Tenant owes the Landlord rent from this period.

Regardless of whether or not the Tenant has clothes in bedroom #2, I find that the Landlord and the Tenant have never entered into a tenancy agreement for bedroom #2. As the parties have never entered into a tenancy agreement for bedroom #2, I find that the Tenant has no right to occupy or access that bedroom and the Landlord has the right to take whatever steps are necessary to secure that bedroom. As the parties have never entered into a tenancy agreement for bedroom #2, I find that the Tenant is not obligated to pay rent for that bedroom. On this basis, I find that the Tenant does not owe the Landlord rent for bedroom #2.

As there is no dispute that the Tenant has paid all of the rent owing for bedroom #1 between July 01, 2010 and December 31, 2010, and I have determined that no other rent is due to the Landlord, I dismiss the Landlord's application for a monetary Order for unpaid rent and I find that the Landlord did not have the right to serve the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*. As the Landlord did not have the right to serve the Tenant with a Ten Day Notice to End

Tenancy, I grant the Tenant's application to set aside the Ten Day Notice to End Tenancy and I dismiss the Landlord's application for an Order of Possession based on this Notice.

I find that the Landlord has provided insufficient evidence to show that the Tenant has permitted an unreasonable amount of occupants in the rental unit. The Landlord only has the right to restrict the number of guests that visit or stay overnight if the Landlord can establish that the number of guests is unreasonable. While I accept that the Tenant may have had his son visiting frequently, that he may have had a female stay overnight, and he may have invited friends to his rental unit, I do not find this to be unreasonable. In reaching this conclusion I was heavily influenced by the absence of any evidence from other occupants of the residential complex that indicates the guests are causing a disturbance or an inconvenience to the other occupants. I therefore find that the Landlord has not established that she has grounds to end this tenancy on the basis of section 47(1)(c) of the *Act*.

I find that the Landlord has provided insufficient evidence to show that the Tenant or his guest has significantly interfered with or unreasonably disturbed another occupant or the landlord; that the Tenant or his guest has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; and that the Tenant or his guest has put the Landlord's property at significant risk. In reaching this conclusion I was heavily influenced by the absence of any evidence from other occupants of the residential complex that corroborates the Landlord's statement that the guests are causing disturbances or that refutes the Tenant's statement that his guests are not causing disturbances. I therefore find that the Landlord has not established that she has grounds to end this tenancy on the basis of section 47(1)(d) of the *Act*.

I find that the Tenant has every right to advise the Landlord that he and other occupants of the residential complex will vacate the rental unit if bedroom #2 is rented out. The Landlord retains the right to communicate with other occupants of the residential complex to determine if the information being provided is accurate; to rent out bedroom #2 regardless of what the other occupants believe; and to access bedroom #2 without providing notice to enter, providing that access does not interfere with the Tenant's right to the quiet enjoyment of his rental unit. I do not find that the dispute arising out of whether this bedroom should be rented constitutes grounds to end this tenancy pursuant to section 47(1)(d) of the *Act*, providing the Tenant does not improperly interfere with the Landlord's right to rent out this bedroom.

I find that the Landlord has provided insufficient evidence to show that the Tenant has engaged in illegal activity of any nature. I find the Landlord has submitted no evidence to corroborate her statement that the Tenant is bringing sex trade workers to the rental unit or to refute the Tenant's statement that he is not bringing sex trade workers to the rental unit. I therefore find that the Landlord has not established that she has grounds to end this tenancy on the basis of section 47(1)(e) of the *Act*.

For all of the aforementioned reasons, I grant the Tenant's application to set aside the One Month Notice to End Tenancy for Cause and I dismiss the Landlord's application for an Order of Possession based on this Notice.

Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that she has grounds to end this tenancy pursuant to section 46 or 47 of the *Act*, I order that this tenancy continue until it is ended in accordance with the *Act*.

As the Landlord has failed to establish the merits of her Application for Dispute Resolution, I dismiss her application to recover the cost of filing her Application for Dispute Resolution.

As the Landlord's Application for Dispute Resolution has been determined, the hearing scheduled for January 05, 2011 has been cancelled. Neither party is obligated to attend at that hearing.

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: December 14, 2010.

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Dispute Resolution Officer