



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      CNC

### Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for cause.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent by registered mail to the landlord on December 10, 2010.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issue(s) to be Decided

- Is the tenant entitled to have the Notice to End Tenancy cancelled?

### Background and Evidence

Both Parties agree that this month to month tenancy started on November 01, 2009. Rent for this unit is \$595.00 per month and is due on the first day of each month. The tenant paid a security deposit of \$300.00 on November 01, 2009.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy for cause in person to an adult who appeared to be residing at the rental unit on November 30, 2010. The reason given on this Notice is that the tenant or a person permitted on the property by the tenant has significantly I interfered with or unreasonable disturbed another occupant or the landlord.

The landlords' property manager testifies that on November 30, 2010 he received a complaint from a neighbour of the tenants concerning excessive noise coming from the tenants unit. He states the tenant was served with the Notice to End Tenancy that day as there had been a history of complaints concerning this tenant. He states an elderly neighbour of the tenant had expressed her concerns to the property manager about her safety due to this tenant and his guests' actions.

The property manager states on one occasion a guest of the tenant actually beat the tenant up which caused concerns with other tenants. More recently a window in the tenants unit was broken. This was reported to the property manager by another tenant and as of yet the tenant has not reported this broken window to either himself or the landlord.

The property manager states he has not sent the tenant any previous warning letters or served any other Notices to End Tenancy but states he has spoken to the tenant previously about his behaviour and that of his guests. The landlord states she has also spoken to the tenant about his behaviour issues and reminded him he must live respectfully and peacefully with his neighbours. The landlord states they have tried diligently to work with the tenant and have explained that this sort of behaviour will not be tolerated. The landlord has requested an Order of Possession to take effect as soon as possible.

The tenant testifies that he did not have a party on November 29 or 30, 2010. He states he had a guest staying with him for a few weeks and this guest came home drunk on the night in question. The tenant states he tried to get this guest to go to bed and agrees he was quite noisy. The tenant states after about 30 to 45 minutes he managed to quieten this guest down and he went to bed. He states this guest has now left the rental unit and no more noise has occurred.

The tenant states he was beaten up about a year ago but this person was not an invited guest and it is unlikely to happen again. The tenant states his window has been broken but this occurred when he was not at home. He states he has spoken to the landlord about it when she called him concerning the noise complaint and also states the window will be fixed.

The tenant states he has never seen any complaint letters from other tenants and he gets along with his neighbours. The tenant seeks to have the Notice to End Tenancy cancelled.

## Analysis

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. The tenant agrees that his guest did create some noise that lasted for approximately 30 to 45 minutes; the landlord has provided no other evidence such as letters of complaints from other tenants or witnesses to support her claim that the tenant or a person permitted on the property by the tenant has significantly disturbed other occupants. Therefore, in the absence of any corroborating evidence, I find that the



# Dispute Resolution Services

Page: 4

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

I would caution the tenant that any further disturbances can be dealt with by the landlord by serving the tenant with warning letters or breach of the tenancy agreement letters resulting in a further One Month Notice to End Tenancy.

## Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated November 30, 2010 is cancelled and the tenancy will continue

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: January 04, 2011.

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Residential Tenancy Branch