



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

**Dispute Codes** MT, CNC

### **Introduction**

This hearing was convened by way of conference call to deal with the tenants' application for an order allowing the tenants more time to dispute a notice to end tenancy, and for an order cancelling a notice to end tenancy for cause.

The tenants attended the conference call hearing, and the landlord also attended with a witness. The parties and the witness each gave affirmed testimony, and the parties were given the opportunity to cross examine each other and the witness on their testimony. All information provided has been reviewed and is considered in this Decision.

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

Are the tenants entitled to more time to make an application to cancel a notice to end tenancy?

Are the tenants entitled to an order cancelling a notice to end tenancy for cause?

### **Background and Evidence**

This month-to-month tenancy began on November 2, 2009 in one unit of the landlord, and then in this unit on April 1, 2010, and the tenants still reside in the rental unit. Rent in the amount of \$750.00 per month is payable in advance on the 1<sup>st</sup> day of each month. On November 2, 2009 the tenants paid a security deposit in the amount of \$325.00, and then an additional \$50.00 on May 4, 2010.

The landlord's agent testified that a neighbour to this unit moved out on October 31, 2010 because of the noise caused by the female tenant. She further stated there were no noise complaints after that but she believes it's because the neighbouring units to these tenants are vacant. During cross examination, the landlord admitted that the neighbour moved out partially because they weren't happy with the landlord.

The landlord's witness testified that he is a caretaker employed by the landlord, and that on December 5, 2010 an altercation took place in the rental unit, and spilled out into the common areas. He stated that he cleaned up blood in the elevator, on the 4<sup>th</sup> floor elevator door, fire doors and walls. He further stated that the fire station on the 4<sup>th</sup> floor was smashed. He issued a time-sheet for 3 hours for that cleaning and repairs to the fire station.

The witness further testified that he spoke to the tenant, and the RCMP showed up. The tenant stated that friends were visiting and one got his tooth knocked out and went to the hospital, breaking the fire station and spitting blood all over in the process.

The witness also testified that on January 20, 2011 he heard someone kick the glass front entry door, and found a man growling at him through the window. He called the police, who put the person in the police car. The female tenant arrived and asked why her friend was in the police car and uttered some profanities at the witness.

On January 23, 2011 other tenants had told him that the female tenant was setting off the fire extinguisher in the street with another girl. The tenants also told him that there was a lot of yelling and swearing at 2:30 a.m. The witness testified that he did not speak to the tenants about it, and has no knowledge of whether or not the landlord's agent spoke to them.

The witness faxed incident reports to the landlord's agent, she prepared the notice to end the tenancy, and he served it on the tenants by posting it to the door on January 24, 2011.

The female tenant testified that she was told she had to move. She stated that her brother, the other tenant, talked to the landlord's agent, who said that the male tenant could stay, but not the female tenant. She further testified that the witness who testified was not telling the truth in his testimony. She stated that for both altercations described, she wasn't there. She had just arrived home after the January 20, 2011 incident, and the witness told her he'd have to "write it up."

She further testified that she was not outside with a fire extinguisher, she was asleep.

The male tenant testified that he did not receive any warnings from the landlord about any incidents. He stated that he arrived home from camp with a friend. He had to restrain the friend, and escorted him out of the building. Once the friend was outside, the tenant went back to his unit. He further stated that during the December 5, 2010 incident, he had 2 friends visiting who got into a fight. When asked whether or not an

agent of the landlord spoke to him about either incident, the tenant responded that they had not; he contacted the agent after receiving the notice to end tenancy.

### **Analysis**

Firstly, I find that the notice to end tenancy was deemed to be served on the tenants 3 days after posting it to the door of the rental unit, or January 27, 2011. The *Act* states that the tenants may apply for dispute resolution to dispute the notice by filing an application within 10 days of service. The tenants filed their application on February 3, 2011, and are within the 10 days, and therefore do not require an order permitting more time to apply to dispute the notice.

In the circumstances, I find that the landlord may not be entirely correct about the identity of the girls on the street with the fire extinguisher. I find that the landlord has failed to establish that it was the female tenant named in this Application. I further find that the tenants were not present, nor did they know about the altercation on January 20, 2011 until the female tenant arrived home. The tenant and the landlord's caretaker exchanged words, but I cannot accept that she, or her brother, had anything to do with that altercation. With respect to the altercation on December 5, 2010, I find that the male tenant did what was reasonable in getting the 2 friends out of the unit once they started to fight.

### **Conclusion**

For the reasons set out above, the tenants' application for and order allowing the tenants more time to make an application to cancel a Notice to End Tenancy is dismissed, and the notice to end tenancy is hereby cancelled.

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: February 28, 2011.

---

Residential Tenancy Branch