



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **Decision**

### **Dispute Codes:**

CNC

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Cause dated January 28, 2011.

Both the landlord and the tenant appeared and each gave testimony in turn.

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

The issue to be determined based on the testimony and the evidence is whether the landlord's issuance of the One-Month Notice to End Tenancy for Cause was warranted or whether it should be cancelled. This requires a determination of whether the tenant or persons permitted on the property by the tenant significantly interfered with and or unreasonably disturbed other occupants or the landlord or;

The burden of proof is on the landlord/respondent to justify the reason for the Notice to end Tenancy under the Act.

### **Background and Evidence**

The tenancy began near the end of November, 2010 with rent of \$420.00. The rental unit consists of a home in which 7 occupants each have their own rooms but share common facilities. Submitted into evidence by the tenant was a copy of the One-Month Notice to End Tenancy for Cause dated January 28, 2011, and copies of communications. The landlord's evidence consisted of testimonials from the other residents, copies of communications and a written statement.

The landlord testified that the One-Month Notice to End Tenancy was issued because of the tenant's disruptive conduct and unreasonable interference with other residents. The landlord testified that the tenant acts in a discourteous manner, is difficult to communicate with and does not fit in with the rest of the residents, all of whom want him to leave.

The landlord testified that the tenant has made unsubstantiated accusations against the landlord and others. According to the landlord, the tenant made a false allegation that he was assaulted and called police, who found that no charges were warranted. In addition, the landlord also objected to notes left by the tenant that the landlord felt had a hostile tone. A copy of one of the notes was in evidence.

The landlord discussed one incident in which the tenant's conduct was perceived as significant interference and unreasonable disturbance. This occurred when the tenant refused a request that he wait to use the kitchen until after the cooking club members had completed their food preparation. Evidently the tenant ignored the request and continued to prepare his own meal. The landlord's witness testified that the tenant did not respect the wishes of the other occupants and merely continued to use the kitchen with no regard for the wishes of the rest. The witness confirmed that he never observed the tenant touching or removing any cooking utensils being used by others.

The tenant testified that he had continued to use the kitchen after being asked to wait. The tenant stated that this was because he needed to access the kitchen, which was a common area, to start the oven to prepare to bake his potato. The tenant testified that portions of the kitchen were not being utilized and there was no reason for him not to access the facilities as was his right to do. The tenant stated that he did not restrict nor interfere with the others and in fact another resident yelled at him and ordered him to leave the kitchen.

The tenant denied that he was ever abusive to anyone nor that he had significantly interfered with or unreasonably disturbed the landlord and other residents. The tenant testified that he had called police as he had been shoved by another resident and left notes because it was necessary.

The tenant seeks that the one-month notice be cancelled on the basis of no merit.

#### Analysis – Notice to End Tenancy

It is necessary that the landlord establish that the Tenant violated the Act by engaging in conduct that significantly interfered with or unreasonably disturbed others, of a magnitude sufficient to warrant ending the tenancy under section 47 of the Act.

The Guideline gives examples of what may constitute "significant Interference" including serious examples of: unreasonable and ongoing noise; - persecution and intimidation; engaging in destructive or violent behaviour.

With regard to the term, "unreasonably disturbed", Black's Law Dictionary defines "unreasonable" as: "Irrational; foolish; unwise; absurd; preposterous; senseless; immoderate; exorbitant; ...capricious; arbitrary; confiscatory."

In this instance I find that the tenant had engaged in conduct that other residents and the landlord genuinely perceived to be impolite. I find that the landlord received numerous complaints about the tenant's failure to fit in and refusal to communicate.

Section 28 of the Act protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

In the situation before me, I find that under the Act, the tenant is under no legal obligation to communicate in a particular way, provided it does not involved threats or violent conduct and provided that the manner of communicating does not constitute an unreasonable disturbance or significant interference with others. There is nothing in the Act that would prohibit the tenant from making complaints or pursuing dispute resolution. I also find that the tenant has a right under the Act to use the common areas as he wishes, provided that he does not unreasonably disturb nor significantly interfere with another resident's right to use the common area too. In fact I find that, while the other residents are at liberty to ask the tenant to wait to use the common area, the Act does not permit them to restrict the tenant's access.

### **Conclusion**

Based on the evidence and the testimony, I hereby order that the One Month Notice to End Tenancy for Cause dated January 28, 2011 is cancelled and of no force nor effect.

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 2011.

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Residential Tenancy Branch