



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes                      CNC, O

### Introduction

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

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was posted in the landlords' mail slot on February 01, 2011. The landlord was deemed to be served the hearing documents on February 04, 2011 the third day after they were posted as per section 90(a) of the *Act*.

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 cancel the One Month Notice to End Tenancy for cause?

### Background and Evidence

Both Parties agree that this month to month tenancy started on December 15, 2009. Rent for this unit is now \$510.00 per month and is due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$350.00 in December, 2009.

The landlord testifies that the tenant was served a One Month Notice to End Tenancy by posting in the door of her rental unit on January 17, 2011. This Notice gives seven reasons to end the tenancy and an effective date for the tenancy to end as of February 17, 2011.

The landlord testifies that the tenant has:

Allowed an unreasonable number of occupants in the rental unit;

The tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonable disturbed another occupant or the landlord,
- Seriously jeopardized the health, safety or lawful right of another occupant or the landlord,
- Put the landlords' property at significant risk.

The tenant has engaged in an illegal activity that has or is likely to:

- Damage the landlords' property,
- Adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord.

The tenant has caused extraordinary damage to the unit, site or property.

The landlord testifies that the tenant has allowed her mother to live with her at her rental unit for longer than two weeks and a male friend of the tenants has been staying at the rental unit for a period of a couple of months. The landlord states that the tenancy agreement signed by the tenant states that guests must not stay longer than two weeks without notifying the landlord.

The landlord testifies that the tenants' male guest has caused a disturbance with the tenant. This has greatly disturbed other tenants and two of these tenants have written letters of complaint. The landlord states one of the letter writers wishes to remain anonymous as she fears reprisals from the tenants' male guest. Neither of the tenants who have complained has attended the hearing as the landlords' witness. The landlord claims she has received complaints about fighting, yelling and arguing from the tenants unit and her caretakers of the building have received other complaints from other tenants who are fearful of the tenant and her male guest.

The landlord states that she received a report that the tenants' male guest allegedly smashed the front window of the complex and she states these actions put the other tenants at risk. The landlord states she does not have a witness to the tenants' guest smashing the window but

states other tenants think it was caused by this person. The landlord states that on or about January 14, 2011 the tenant and her male guest were both arrested by the police who attended her rental unit due to fighting. The landlord states the tenant is reasonable for the actions of her guests and their actions impact on the other tenant's safety, security and quiet enjoyment of their rental units.

The landlord requests an Order of Possession to take effect on February 28, 2011.

The tenant disputes some of the landlords' claims. The tenant states her mother was staying at the rental unit for two months as she was undergoing surgery in the area. The tenant states she spoke to the building manager about this and was given verbal permission for her mother to stay at her unit.

The tenant states there have been a couple of incidents where her boyfriend was arguing with her and on one of these occasions they were both arrested. She states she was later realised and no charges were laid. She states she has ended the relationship with her boyfriend and has enrolled in a drug and alcohol program to prevent further alcohol related incidents occurring again.

The tenant testifies that the window was not broken by her guest as he was held in jail on the night it happened. The tenant states the police have only been called to her unit on the one occasion when she was arrested. The tenant states she offered to go on a probationary term for her tenancy if the landlord does not enforce the Notice as she is dealing with her problems.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. 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 there was one incident where a disturbance took place because of an

argument between herself and her boyfriend but no other incidents have occurred to disturb other tenants and she denies that the window was broken by her boyfriend.

The landlord has provided two letters from one tenant and another letter from an anonymous tenant but no witness to show the tenants boyfriend smashing the window or witnesses concerning the alleged disturbances. When the tenant contradicts the information in these letters the landlord would be required to provide either sworn statements from these witnesses or ask them to appear at the hearing as witnesses to corroborate the landlords' claims under oath.

Therefore, in the absence of any corroborating evidence, I find that the 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.

The landlord is however entitled to serve the tenant with another Notice to End Tenancy if any incidents occur in the future.

### Conclusion

The tenant's application is allowed. The One Month Notice to End Tenancy for Cause dated January 17, 2011 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: February 11, 2011.

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Residential Tenancy Branch