



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      CNC, MT, FF

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and an extension of time in which to make his application. Both parties participated in the conference call hearing.

### Issue to be Decided

Should the tenant be given more time to make his application to dispute the notice to end tenancy?

Should the notice be set aside?

### Background and Evidence

The rental unit is one of four units in a fourplex and is located on one half of the upper floor of the residential premises. The tenancy began in August 1993.

The landlord testified that she served the tenant with a one month notice to end tenancy for cause (the "Notice") by posting it to his door on January 27, 2011. The tenant testified that he was out of the province on that date and did not receive the Notice until February 15 when it was emailed to him by his daughter. The tenant applied to dispute the Notice on February 17.

The Notice alleges that the tenant has engaged in illegal activity which has jeopardized a lawful right or interest of another occupant or the landlord and has breached a material term of the tenancy agreement and not corrected the situation within a reasonable time after having been given written notice to do so.

The parties were involved in a previous dispute which ended in a hearing on July 31, 2006 at which time the parties agreed that if the landlord believed the tenant's uninsured vehicle created a serious jeopardy, she would first obtain an order for the tenant to comply with the tenancy agreement prior to serving a notice to end tenancy. The parties further agreed in that

hearing that the tenant would remove his personal belongings from beneath the stairs and would store those belongings beside the garbage cans.

The landlord testified that she served the Notice because the tenant has kept his belongings on common property rather than within the area he exclusively occupies. She alleged that the tenant has also allowed his tenant's insurance and his vehicle insurance to lapse, the latter in contravention of the additional terms of the tenancy agreement. The landlord further testified that the tenant is frequently absent from the unit and that his absence has created a number of problems. Recently a cat was trapped in the wall of the residential premises and the landlord suggested that had the tenant been home more, he may have heard the cat earlier and the cat would not have died as a result of the experience. The landlord further testified that the tenant failed to pay for utilities and those utilities were cut off for a period of time, affecting other tenants in the residential property. The landlord stated that sometime in the fall it was reported by another tenant that a window in the rental unit was left open and the landlord had to enter the unit to shut the window in order to prevent damage from the elements. On another occasion another tenant complained to the landlord that he heard an unusual noise coming from the unit and the landlord again entered the unit to find that a device used to oxygenate the tenant's aquarium was excessively noisy. The landlord expressed frustration that communication with the tenant has been difficult as the tenant does not ordinarily reside in the rental unit.

The landlord testified that on January 20, 2011 she served the tenant with a letter advising him that he had breached several terms of the tenancy agreement. The tenant testified that he did not receive this letter until he received the Notice on February 15.

The tenant acknowledged that some of his belongings were stored on common property, but argued that as the July 31, 2006 agreement had required the tenant to move some of his belongings to common property beside the garbage cans, there should not be an issue with that storage. The tenant acknowledged that some of his belongings were stored in areas which other tenants had the right to use, but stated that he had received permission from those tenants to use the areas in question for storage. The tenant argued that while the additional terms of the tenancy agreement require him to maintain vehicle insurance, this insurance benefits only himself and not the landlord and therefore allowing the insurance to lapse would not negatively affect the landlord. The tenant acknowledged that he was frequently away from the rental unit, but insisted that his children and friends would regularly attend at the unit. The tenant testified that when the cat was trapped behind the wall of the property, he was home for several days before he heard its cries. The tenant testified that the landlord had both his email and cell phone number but did not contact him when problems arose such as the open window or the aquarium.

The landlord argued that she had made a number of attempts to contact the tenant when issues arose, but he was unavailable on the telephone and did not answer email. At the hearing the parties confirmed that the telephone number and email were functional and could be used to contact the tenant. The tenant confirmed that the landlord could use the address of \* for service of any further documents.

### Analysis

First addressing the claim for more time to file his application to dispute the Notice, although the landlord was entitled under the Act to serve the Notice by posting it to the door of the rental unit, I find that the tenant did not actually receive the Notice until February 15. I therefore find that an extension of time to dispute the Notice is not required.

The landlord bears the burden of proving that there are grounds to end the tenancy. The first ground is that the tenant engaged in *illegal* activity which has jeopardized a lawful right or interest. The landlord has failed to prove that the tenant engaged in any illegal activity whatsoever and I find that this ground to end the tenancy has not been proven. I find that the tenant did not receive the letter advising of breaches of the tenancy agreement until he also received the Notice on February 15 and therefore was not allowed time to rectify the breaches. Accordingly I find that this ground to end tenancy cannot be sustained. I order that the Notice be set aside and of no force or effect. As a result, the tenancy will continue.

In the interest of assisting the parties in resolving future disputes, I find it appropriate to comment on the testimony provided in the hearing. The landlord claimed that the tenant was inconsiderate, storing his belongings in space that should have been available to other tenants. Because the tenant obtained the consent of the affected occupants, it is unreasonable for the landlord to insist that the tenant remove his property.

The tenancy agreement and additional terms do not appear to contain a requirement that the tenant maintain insurance over his belongings other than his vehicles and therefore failure to maintain tenant's insurance cannot form the basis for a notice to end tenancy. The landlord is encouraged to contact her insurance agent as was agreed upon in the July 31, 2006 hearing in order to determine whether her lawful right or interest is indeed seriously jeopardized by any failure to maintain vehicle insurance.

The tenant is encouraged to closely monitor his cell phone, voicemail and email and to maintain contact with the landlord and respond promptly to the landlord's messages.

### Conclusion

The Notice is set aside.

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: March 04, 2011

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Residential Tenancy Branch