



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      CNC, MNDC, PSF, SS, LRE, LAT, FF, O

### Introduction

This hearing was scheduled to hear the tenant's application to cancel a Notice to End Tenancy for Cause; monetary compensation for damage or loss under the Act, regulations or tenancy agreement; orders to provide services or facilities required by law and suspend or set conditions on the landlord's right to enter the unit; authorize the tenant to reduce rent; to recover the filing fee paid for this application, and other issues.

Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party. The landlord stated that she had not received photographs provided to me by the tenant but the tenant claimed they were sent to the landlord. I excluded that evidence with the provision that if I later determined the evidence was significantly relevant I would deal with the issue at that time.

The tenant indicated several matters of dispute on her application and confirmed that the main issue to deal with during this proceeding is the Notice to End Tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. Therefore, I will deal with the tenant's request to set aside, or cancel the landlord's Notice to End Tenancy for Cause and I dismiss the balance of the tenant's claim with liberty to re-apply.

### Issue(s) to be Decided

Should the Notice to End Tenancy be upheld or cancelled?

### Background and Evidence

The tenancy commenced in 2005 with a former landlord and the current landlord acquired the residential property in August 2007. The tenant rents one of four units located at the residential property for a monthly rent of \$450.00 due on the 1<sup>st</sup> day of

every month. The tenant is provided parking for one vehicle on the residential property under the terms of the tenancy agreement.

On March 27, 2011 the landlord posted a 1 Month Notice to End Tenancy for Cause (the Notice) on the tenant's door. The tenant disputed the Notice within the required time limit provided by the Act.

The Notice has an effective date of April 30, 2011 and indicates the reasons for ending the tenancy are as follows:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
  - put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to:
  - damage the landlord's property
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
  - jeopardize a lawful right or interest of another occupant or the landlord
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The landlord was asked to explain the reasons for issuing the above Notice. The landlord began by describing incidents that appeared to be most disturbing to the landlord that I determined took place after the issuance of the Notice. I explained to the landlord I needed to hear about incidents that took place before the issuance of the Notice. The landlord, the assistant landlord, and the landlord's witness testified as follows:

1. In October 2010 the tenant was asked to move her car and the tenant responded by unplugging the landlord's garden equipment that she was using at the time, kicking the eavestrough and shed, and slamming the door of the rental unit.
2. In October 2010 the roof of the residential property was been repaired and the tenant angrily yelled at the landlord and landlord's assistant about the amount of noise.
3. The tenant wrote to the landlord on numerous occasions about the noise coming from the unit above the tenant's unit to the point the upper tenants felt harassed.

4. The tenant began using the parking space for another rental unit without the permission of the landlord.
5. The tenant or the tenant's guest parked on the lawn of the neighbour's property causing significant damage to the lawn. The neighbour and the landlord asked that the tenant not park there on repeated occasions.
6. On March 26, 2011 the tenant put cardboard in the landlord's parking spot.

The tenants responded to the above described incidents as follows:

1. In July 2010 the tenant unplugged the landlord's garden equipment in an effort to talk to her about the landlord's comments about the tenant having another occupant and increasing the rent. The tenant denied kicking the eavestrough, kicking the shed or slamming her door as described by the landlord.
2. The tenant was away on the weekend in October 2010 that the roof was being repaired and claimed the yelling came from another occupant of the property.
3. The tenant did not deny that she wrote the landlord on numerous occasions about the disturbances she was experiencing from the tenant's living above her.
4. The tenant had the permission of the tenants of another rental unit to use the parking space they were not using. Currently, the tenant is parking her vehicles at her girlfriend's house.
5. The tenant went to the city hall and determined that the property she was parking on did not belong to the neighbour.
6. The tenant stores cardboard in the carport before it gets recycled. The tenant found cardboard thrown in the back of her truck by the landlord.

The landlord submitted that the landlord has left four warning letters in the tenant's mailbox dated October 4, 2010, February 4, 2011, February 8, 2011 and March 26, 2011. The tenant denies receiving the first two letters but acknowledges receiving the last two letters.

Documentary evidence accepted and considered relevant in making this decision include the tenancy agreement, the Notice to End Tenancy, the landlord's warning letters, the photographs provided by the landlord, the written submissions of the parties and witnesses, and letters from the tenant to the landlord.

### Analysis

Where a tenant disputes a Notice to End Tenancy for Cause, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy must end for the reasons indicated on the Notice.

Although the landlord introduced evidence concerning the tenant's alleged behaviour in late March 2011 and April 2011 such alleged behaviour took place after the Notice to End Tenancy was issued. In order to end this tenancy based upon the Notice to End Tenancy before me, I must be satisfied that the tenant's actions gave the landlord sufficient grounds to end the tenancy under section 47 of the Act before the Notice was issued. Accordingly, I have only considered evidence pertaining to the tenant's conduct before the issuance of the Notice to End Tenancy on March 27, 2011 in reaching this decision.

Section 47 of the Act provides that the landlord may end a tenancy where the tenant has conducted themselves in such a way that the landlord is unreasonably disturbed or significantly interfered with, the landlord's lawful rights or health or safety are jeopardized, or the landlord's property is put at significant risk. It is important to note that in order to end the tenancy the Act stipulates that the tenant's behaviour not only be disturbing or seen as interfering but that it was unreasonable and significant. I interpret the inclusion of these words to mean that the behaviour must be more than inappropriate, bothersome, annoying, or a minor violation.

With respect to the landlord's submissions concerning the tenant's behaviour in October 2010 I accept the landlord's witness statements and I find that the tenant's behaviour in response to the roofing noise was certainly inappropriate and disturbing. However, I find insufficient evidence that such conduct was frequent or repeated before the Notice to End Tenancy was issued. Nor do I find the isolated incident sufficiently disturbing or significant to warrant ending the tenancy as evidenced by the landlord's decision not to end the tenancy at that time. In other words, I do not find the landlord's delay in issuing a Notice to End Tenancy six months after the incident to be sufficiently compelling to end the tenancy at this time.

I found the disputed testimony and the lack of witnesses or evidence of damaged property insufficient to conclude that the tenant kicked the eavestrough, the shed or slammed the door as claimed by the landlord.

The tenant acknowledged unplugging the landlord's garden equipment to get the landlord's attention in order to converse with the landlord and I find such behaviour inappropriate but I do not find the one incident sufficiently unreasonable or significant to warrant ending the tenancy. As found above, I have not been provided evidence that this conduct was repeated and the landlord did not pursue ending the tenancy shortly after this incident but waited several months before issuing a Notice to End Tenancy. I find the landlord's delay further evidence that the incident was not that significant.

It is apparent to me that the tenant has conducted herself inappropriately at times and that the tenant reacts out of anger. Other forms of communication are much more appropriate, such as in written form, and if the parties cannot resolve a dispute between themselves, the tenant's remedy is to make an Application for Dispute Resolution. The tenant is cautioned that repeated or frequent inappropriate behaviour by the tenant, or a person permitted on the property by the tenant, may be found to constitute unreasonable disturbance or significant interference and grounds to end a tenancy.

The Notice issued by the landlord indicates the tenant has engaged in illegal activity. Upon hearing from the landlord the illegal activity is in relation to the tenant allegedly parking on the neighbour's property. The tenant has submitted that parking in front of the neighbour's property is not illegal after contacting city hall. The landlord has the burden to show that the activity is illegal, among other criteria, in order to end the tenancy for this reason. After hearing that the tenant attended city hall in an effort to determine the legality of this parking situation but the landlord or the neighbour has not, I find the landlord has not met the burden of establishing that the tenant has acted illegally. Thus, I find it unnecessary to consider the other criteria necessary to end the tenancy for illegal activity. Therefore, I do not find the tenancy must end for illegal activity.

I do not find the tenant's written complaints to the landlord concerning the disturbances she was experiencing from other tenants to be grounds to end the tenancy. Rather, a tenant that is disturbed by another tenant is often encouraged to put such complaints in writing in order to have the landlord address the issue.

With respect to the cardboard found in the landlord's parking space and in the back of the tenant's truck, it would appear that both parties have acted inappropriately. Under the Act, the tenant is entitled to reasonable and lawful access to common areas. I find the landlord has the right to designate certain common areas for reasonable and lawful purposes such as garbage and recycling areas. The landlord has the burden to communicate what reasonable use of the common area is and the tenant is expected to use the space accordingly. The landlord does not have the right to place objects in the tenant's vehicle. Therefore, I ORDER the landlord to communicate to the tenant the expectations for reasonable use of the common areas designated for recyclables and garbage and I ORDER the tenant to comply with the landlord's instructions. If the tenant is of the position the landlord's instructions are unreasonable the tenant may apply for dispute resolution.

Upon review of all of the evidence before me, I find the single largest issue under dispute at the time the Notice to End Tenancy was issued related to parking. On the

Notice to End Tenancy the landlord has indicated that this is a material term of the tenancy agreement and that the tenant has violated this term despite written warning to correct the breach.

Upon review of the tenancy agreement I find that parking for one vehicle is provided to the tenant by the landlord and that this is a term of the tenancy agreement. Based upon the tenant's own testimony I accept that the tenant has violated this term when she parked two vehicles in one parking space in early 2010. However, I do not find parking to be a material term. A material term is a term that goes to the root of the agreement and is so paramount to the tenancy that even the slightest breach would be grounds for ending the tenancy. Therefore, I do not find sufficient evidence of a breach of a material term and I do not find the tenancy should end for this reason.

When a landlord and tenant are in dispute as to compliance with of a term of a tenancy agreement the parties are at liberty to make an Application for Dispute Resolution seeking an Order for compliance from the director. A violation of an Order by the director would be grounds for ending the tenancy under section 47. From what I heard during the hearing, the tenant is no longer parking two vehicles in one parking space and is no longer using the parking space allocated to another tenant. Thus, I am satisfied this issue has now been resolved.

In summary, I have found the landlord had insufficient grounds to issue the Notice to End Tenancy on March 27, 2011 and I set aside that Notice with the effect that this tenancy continues. As stated previously, in reaching this decision I have not considered the tenant's conduct after the Notice was issued March 27, 2011 and the landlord is at liberty to take appropriate action to address the tenant's alleged conduct after March 27, 2011.

As I have granted the tenant's request to set aside the Notice, I award the filing fee to the tenant. The tenant is hereby authorized to deduct \$50.00 from a future month's rent in satisfaction of this award.

### Conclusion

The Notice to End Tenancy issued March 27, 2011 is set aside with the effect that the tenancy continues until such time it ends under the Act. The tenant is awarded the filing fee and may deduct \$50.00 from a future month's rent.

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: April 27, 2011.

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Residential Tenancy Branch