



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### **Dispute Codes:**

CNC

### **Introduction**

This hearing dealt with the Tenant's application to cancel a *1 Month Notice to End Tenancy for Cause* (the Notice).

Both parties appeared at the hearing, gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

It was established that the Tenant served the Landlord with the Notice of Hearing documents, by handing the documents to the Landlord on April 2, 2011.

This is the second time the Tenant has applied to cancel the Notice. At a previous Hearing, on March 24, 2011, neither party signed into the teleconference and the Dispute Resolution Officer granted the Tenant leave to re-apply. The Tenant re-applied to cancel the Notice on March 31, 2011.

The Landlord provided evidence to the Residential Tenancy Branch on April 13, 2011. She did not provide the Tenant with a copy of her evidence package until the evening of April 19<sup>th</sup>, the day before the Hearing. She stated that she did not provide him with a copy of her evidence package because she did not want to cause conflict between the Tenant and other occupants in the rental unit. Evidence must be provided to the Branch and to the other party at least 5 clear days before the date of the Hearing in order for the other party to prepare for the Hearing. The Landlord did not provide the Tenant with copies of her evidence 5 clear days before the Hearing and therefore I declined to consider the Landlord's documentary evidence. The Landlord was invited to provide me with her affirmed testimony with respect to her evidence.

### **Issue to be Decided**

Should the Notice issued February 28, 2011, be cancelled?

### **Background and Evidence**

The parties were in agreement to the following facts:

- The Tenant was personally served with the Notice on February 28, 2011.

- The Notice discloses the following reasons for ending the tenancy:
  1. The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord;
  2. The Tenant has engaged in **illegal activity** that has, or is likely to: 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.

The Landlord testified that another occupant complained that the Tenant had opened his mail. She stated that the Tenant had given a prospective tenant misinformation about the rental unit, telling the prospective tenant that it was a “criminal house”. The Landlord testified that she had warned the Tenant about not making noise after 12:00 midnight because it was disturbing other occupants. She stated that the Tenant is a dishonest person because she had given him \$50.00 to provide to another occupant and that the Tenant had not given it to the other occupant. The Landlord stated that the other occupant could give testimony as a witness to these events, but when called the other occupant was not available.

The Tenant testified that he has never opened anyone else’s mail. He stated that he told a prospective tenant, who was female, that the other 6 occupants were all male. He said that the prospective tenant told him that the Landlord had not told her this, and that she felt uncomfortable sharing accommodation with 6 males. The Tenant testified that he had made an agreement with the other occupant that he would pay him the \$50.00 when he received an MSP cheque.

### **Analysis**

In a situation where a tenant seeks to cancel a Notice to End Tenancy, the landlord is required to establish, on the balance of probabilities, that the tenancy should end for the reasons indicated on the Notice to End Tenancy.

I find that the Landlord has not provided sufficient evidence that the Tenant has engaged in illegal activity, or that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. The Tenant denied all of the allegations and the Landlord’s witness was not available to give testimony. The Landlord did not provide sufficient evidence that the Tenant was disturbing other occupants (i.e. statements from witnesses regarding unreasonable disturbance).

Therefore, I grant the Tenants’ application to cancel the Notice to End Tenancy. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

**Conclusion**

The Notice to End Tenancy issued February 28, 2011, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

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 20, 2011.

---