



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

**Dispute Codes:** MT, CNC, FF

### **Introduction**

This hearing dealt with the Tenant's application to cancel a *1 Month Notice to End Tenancy for Cause* (the Notice); for an Order that the Landlord comply with the Act, regulation or tenancy agreement; and recovery of the filing fee.

Both parties appeared at the hearing, and gave affirmed testimony. It was established that the Tenant served the Landlord with the Notice of Hearing documents, by registered mail, sent April 5, 2011. The Landlord testified that he picked up the registered mail documents at a postal outlet on April 7, 2011. It was determined that both parties received the other party's documentary evidence.

### **Issue to be Decided**

- Should the Notice issued April 4, 2011, be cancelled?
- Should the Landlord be ordered to comply with the Act, regulation or tenancy agreement?

### **Background and Evidence**

The parties were in agreement to the following facts:

- The rental unit is a cottage. The Landlord lives in another building situated on the rental property.
- The rental unit has one bedroom, two full baths, a kitchen, living/dining area and a bonus room which is approximately 15 x 15 feet.

- The Landlord inherited the tenancy from the Tenant's previous Landlord. The Tenant began paying rent to the Landlord in January, 2011.
- The tenancy is a month-to-month tenancy. Monthly rent is \$1,600.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$800.00 and a pet damage deposit in the amount of \$400.00 on October 4, 2009. In November, 2009, the Tenant paid an additional \$400.00 towards the pet damage deposit, making the total pet damage deposit \$800.00.

The Landlord has alleged the following reasons on the Notice for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site.
- Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or well-being of another occupant or the landlord.
- Tenant has assigned or sublet the rental unit/site without landlord's written consent.
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.

The Landlord testified that there are a multiple number of occupants in the rental unit. He stated that he has asked the Tenant how many people are living in the rental unit and their names, but the Tenant has not been forthcoming with his answer. The Landlord stated that the Tenant was not allowed to charge rent to other occupants or to have other occupants in the rental unit without the Landlord's permission. The Landlord testified that the Tenant is also subletting his parking spot to another person without the Landlord's permission.

The Landlord stated that he did not intend to mark off the box on the form that stated the Tenant was engaging in illegal activity. He stated that the Tenant was allowing rats to come on the property by leaving his garbage out and that it was disturbing other tenants and the Landlord.

The Landlord stated that the Tenant gave him false information about who was living in the rental unit.

The Tenant testified that he has a friend from out of town who stays with him 3 or 4 days a week. In addition, he has a girlfriend who sometimes stays on the weekends.

The Tenant denied renting out a parking spot. He stated that the other tenants on the rental property had two parking spots and that he was designated three. He stated that the Landlord required one of the other tenant's spots for one of his vehicles, so the Tenant allowed the other tenants to park their truck on one of his designated spots.

### **Analysis**

#### Regarding Tenant's application for an Order that the Landlord comply

When requesting an Order that the landlord comply, the Application for Dispute Resolution requires the tenant to state the section of the Act or regulation in the Details of the Dispute box or set out what portion of the tenancy agreement the tenant wishes the landlord to comply with. The Tenant did not indicate on his application which part of the Act, regulation or tenancy agreement he sought the Landlord to comply with. Therefore, this portion of his application is dismissed.

#### Regarding the Tenant's application to cancel the Notice

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.

- Tenant has allowed an unreasonable number of occupants in the unit/site.

The Landlord described a rental unit with a one bedroom suite on the upper floor and a lower floor with a bathroom and 15 x 15 room (with a separate entrance). I do not find two or three people (where two people share a bedroom) living in the rental unit to be an unreasonable number of occupants.

- Tenant has engaged in **illegal activity** that has, or is likely to adversely affect the quiet enjoyment, security, safety or well-being of another occupant or the landlord.

The Landlord did not provide any evidence of illegal activity on the Tenant's part.

- Tenant has assigned or sublet the rental unit/site without landlord's written consent.

Assigning is the passing of an agreement from a tenant to another person. Assigning or subletting occurs when the original tenant does not occupy the rental unit. In the case of subletting, the tenant retains a reversionary interest in the property and is actually the landlord of the sub-tenant. I find that the person who lives part time at the rental unit is not a tenant, but is a roommate or an occupant. I find that the Tenant has not assigned his interest in the rental unit to his roommate and that the Tenant has not sublet the rental unit. If a landlord intends to restrict the number of occupants in a rental unit, this must be stipulated in the tenancy agreement. There is no clause in the tenancy agreement which restricts the number of occupants. The tenancy agreement provided in evidence by the Landlord contains a relevant clause which states:

## **11. OCCUPANTS AND GUESTS**

- 1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
- 2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.
- 3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved through dispute resolution under the Residential Tenancy Act.

- Tenant knowingly gave false information to **prospective tenant or purchaser** of the rental unit/site or property/park.

The Landlord misread this sentence. This particular reason is usually given where a tenancy is ending and the tenant gives false information to a prospective new tenant, or where a rental property is for sale and the tenant gives false information to a prospective purchaser. The Landlord gave no evidence of either of these scenarios.

The Landlord has not provided sufficient evidence to establish, on the balance of probabilities, that the tenancy should end for any of the reasons indicated on the Notice to End Tenancy. Therefore, I grant the Tenant's 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.

The Tenant has been successful in his application and is entitled to recover the filing fee from the Landlord. The Tenant may deduct \$50.00 from a subsequent month's rent in satisfaction of this award and the Landlord must consider the rent paid in full.

This Hearing was challenged by the degree of animosity between the parties. The Landlord is cautioned that he is required to ensure that the Tenant's right to quiet enjoyment and peaceful occupation of the rental unit is respected. I am enclosing a Guide for Landlords and Tenants in British Columbia, for the information of both parties.

### **Conclusion**

The Notice to End Tenancy issued April 4, 2011, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant may deduct \$50.00 from future rent due to the Landlord.

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 29, 2011.

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