



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, MNDC

### Introduction

This hearing was scheduled to deal with the tenants' application to cancel a Notice to End Tenancy for Cause, for Orders for the landlord to comply with the Act, regulations or tenancy agreement, and compensation for damage or loss under the Act, regulations or tenancy agreement. 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 tenants indicated they had a witness to call upon during the hearing. I confirmed that the witness was excluded from hearing the proceeding until such time he was called upon to testify.

### Issue(s) to be Decided

1. Should the Notice to End Tenancy be upheld or cancelled?
2. Is it necessary to issue orders to the landlord to comply with the Act, regulations or tenancy agreement?
3. Have the tenants been overpaying rent by \$50.00 per month?

### Background and Evidence

I was provided the following undisputed evidence by the parties. The co-tenants are mother and daughter and have been residing in the basement bachelor suite (the rental unit) since October 1, 2010. The landlord and the mother had a verbal tenancy agreement requiring the mother to pay the landlord \$650.00 by the 1<sup>st</sup> of every month, including hydro. In December 2010 the daughter asked the landlord to complete a rental form so that she could receive shelter allowance. The parties verbally agreed that the daughter would be recognized as a co-tenant, the rent would change to \$700.00 per month including hydro, and the landlord completed the rental form indicating the rent was \$700.00 per month to be shared among two people.

On May 30, 2011 the landlord personally served a 1 Month Notice to End Tenancy for Cause (the Notice) upon the tenants. The Notice has a stated effective date of July 1, 2011 and indicates the reason for ending the tenancy is because the tenants have allowed an unreasonable number of occupants in the unit.

The landlord submitted that the upper level of the residential property is approximately 1,500 square feet and the rental unit is approximately 550 square feet. The hydro bill is in the upper tenant's name and the upper tenant is responsible for 75% of the bill; however, since the tenants moved in the hydro consumption has approximately doubled and the landlord has been compensating the upper tenant for additional hydro costs.

The landlord attributes the increased hydro consumption to the tenants having windows open and the heat on, but also to an additional occupant living in the rental unit. The landlord submitted that when he noticed the increased hydro bills he talked to the tenants about their consumption and having an additional occupant but the tenants denied there was an additional occupant. The upper tenant and the neighbours reported to the landlord that the tenants appear to have an additional occupant, the daughter's boyfriend, living with them. However, the landlord felt he could not prove there was an additional occupant until he observed a piece of mail addressed to the occupant at the rental unit. After seeing the mail the landlord issued the Notice to End Tenancy.

The landlord submits that a 550 square foot bachelor unit is too small for three adults and two dogs and that excessive wear and tear will result as well as greater utility consumption.

The landlord provided a written submission, signed affidavits from the neighbours attesting to observations of the occupant being at the rental unit and seeing his Thunderbird parked out front day and night; a photograph of the piece of mail addressed to the occupant at the rental unit; and hydro bills and bar graphs showing the additional hydro consumption and cost.

In response to the landlord's submissions, the tenants responded as follows:

- The daughter's boyfriend does not live at the rental unit but does visit frequently;
- The daughter's boyfriend assists the daughter with her physical disabilities and keeping the unit clean;
- The daughter's boyfriend has a full time job and has his own apartment;
- The daughter's boyfriend goes home every night, usually by bus or Skytrain;
- The daughter's boyfriend receives mail at his own apartment;

- The daughter's boyfriend uses the rental unit as a mailing address for documents involving court proceedings with his ex-spouse only;
- The Thunderbird car is the daughter's car although she allows her boyfriend to drive it due to her physical disabilities;
- Additional hydro consumption is likely attributable to:
  - the tenants being home most of the time compared to previous tenants,
  - the tenant's physical disability,
  - a colder than normal winter and spring,
  - tile flooring in the below-ground rental unit,
  - the dryer does not always dry their clothes in one cycle and has to be turned on again, and,
  - the upper tenant's use of the Jacuzzi tub, dishwasher and electric guitars
- The tenants made a conscious effort to reduce their hydro consumption by turning off their three baseboard heaters after the landlord talked to them about their consumption;
- The tenants have put some carpeting down and wear warm clothes in an effort to reduce their need for the baseboard heaters; and,
- The tenants do not leave the windows open when it is cold outside; however, when they need fresh air they do open their two windows

The tenants called a witness, who identified himself as the mother's ex-spouse and daughter's ex-stepfather. The witness testified that he has lived at his apartment since September 2010 and approximately five months ago the daughter's boyfriend came to live with him. The daughter's boyfriend was added to the witness's tenancy agreement and receives mail at their apartment. The daughter's boyfriend comes home 4 to 5 nights per week but he does not ask the daughter's boyfriend where he spends the other 2-3 nights per week. The daughter's boyfriend comes home via Skytrain or bus or sometimes the witness picks him up. The witness turned off the baseboard heaters in the rental unit in April upon the request of the tenants.

The tenants provided a copy of two pages of the witness's tenancy agreement, a copy of the vehicle registration for the Thunderbird car, copies of the Shelter information forms signed by the landlord in September 2010 and December 2010, copies of mail address to the daughter's boyfriend at his own apartment, and written statements of the witness, a friend, and the tenant.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice. The reason given on the Notice is as provided by section 47(1)(c) of the Act which permits a landlord to end the tenancy if there is an unreasonable number of occupants in the rental unit.

The tenants have denied that there is another person occupying the rental unit other than the two tenants and their two dogs. Accordingly, the landlord has the burden to prove that there is an additional occupant residing in the rental unit and that an additional unit is an unreasonable number of occupants for the rental unit.

The Act does not define “occupant” and I have turned to its ordinary meaning. The ordinary meaning of “occupant” is a person who lives in or has possession of a space. Accordingly, I find that an occupant does not include a guest or visitor of a tenant but is a person that lives at the rental unit.

Based on the hydro bills provided by the landlord I accept the landlord’s submission that hydro consumption has nearly doubled since the tenants began occupying the rental unit. I also accept that the additional hydro costs are, understandably, of great concern to the landlord; however, the issue for me to determine is as stated above, which is whether there is sufficient evidence that an additional occupant is residing in the rental unit.

Below I have considered and analyzed the landlord’s evidence in order to determine whether there is an additional occupant living at the rental unit.

Additional hydro consumption is one indicator that an additional occupant is residing in the unit; however, I find increased hydro consumption in itself does not prove an additional occupant is residing in the unit.

. The neighbours attest to seeing the Thunderbird car parked in front of the rental unit on a frequent basis. One neighbour states that the Thunderbird appeared around the same time the daughter’s boyfriend appeared at the rental unit and the boyfriend told the neighbour it was his car; however, the documentary evidence points to the daughter as being the registered owner since at least April 15, 2011. In light of the documentary evidence, I accept that the Thunderbird is the daughter’s car and I find the sightings of the car in front of the rental unit to be insufficient to tie the presence of the car to the presence of the daughter’s boyfriend at the rental unit.

The neighbours also attest to seeing or hearing the daughter's boyfriend at the residential property on a frequent basis. This was not disputed by the tenants; however, they explain that he is a frequent visitor which falls under their right, as tenants, to have guests at the rental unit. Therefore, I find that frequent sightings of the tenant's boyfriend does not in itself establish that the tenant's boyfriend is residing at the rental unit.

With respect to the mail addressed to the tenant's boyfriend, I find that faced with a reasonable explanation for the one piece of mail and evidence that the boyfriend also receives mail at another location, the one piece of mail is insufficient to establish the boyfriend is living at the rental unit.

The tenants provided some evidence that the daughter's boyfriend lives elsewhere. The tenancy agreement does not appear to be signed by the tenant's boyfriend and I do not give the partial tenancy agreement very much weight; however, the witness testimony and mail addressed to the boyfriend at his another address satisfies me that it is reasonably likely the boyfriend lives with the witness as he stated.

In light of all of the evidence before me, I conclude, based on the balance of probabilities, that the tenant's boyfriend is frequently at the rental unit and that the boyfriend may even spend a few nights per week at the rental unit, as a guest. However, I find insufficient evidence that the boyfriend is living at the rental unit. Therefore, I find the landlord has not met his burden to show that persons other than the tenants are occupying the rental unit and I cancel the Notice to End Tenancy.

I make no orders for compliance to the landlord as I was not satisfied the landlord has violated the Act, regulations or tenancy agreement.

With respect to the monthly rent, I find the testimony of the parties and the Shelter Information documents indicative of an initial tenancy agreement with the mother and then a new tenancy agreement for the mother and daughter as co-tenants. Where a new tenancy agreement is negotiated the parties are at liberty to negotiate all of the terms. Therefore, I accept that the parties negotiated a new tenancy in December 2010 and the rent negotiated for the new tenancy agreement was \$700.00 per month.

In light of the above, the tenants' request to recover the additional \$50.00 per month paid since December 2010 is denied and the rent shall remain at \$700.00 per month until such time it is legally changed or a new tenancy agreement is entered into. That

being said, I encourage the parties to accept the advocate's offer to assist the parties in reaching a mutually agreeable resolution for their respective positions.

Conclusion

The landlord did not establish that an additional occupant is residing in the rental unit and the Notice to End Tenancy is cancelled.

No orders were issued to the landlord. The tenants' monetary claim was dismissed.

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: June 29, 2011.

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Residential Tenancy Branch