



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for cause.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the landlord on May 12, 2011. The landlord was deemed to be served the fifth day after they were mailed as per section 90(a) of the *Act*.

Both parties appeared and the tenant was supported by his legal advocate. The Parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

During the hearing the landlord brought to my attention that the name for the landlord on the application was wrong. Both Parties agreed that the landlords name can be amended to reflect the correct name for this decision.

### Issue(s) to be Decided

- Is the tenant entitled to have the One Month Notice to End Tenancy cancelled?

Background and Evidence

Both Parties agree that this month to month tenancy started on September 01, 2009. The tenant pays a monthly rent for this unit of \$375.00 on the first of each month.

The landlord testifies that the tenant is in 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 testifies that the tenant was served with a One Month Notice to End Tenancy on May 06, 2011 which has an effective date to vacate the unit as of May 31, 2011. This notice was served to the tenant in person.

The landlord testifies that the building is a purpose built building for low cost housing for singles and is an alcohol and drug free building as many tenants are on a recovery program. He states this tenant signed a crime free housing addendum to his tenancy agreement and has breached this on several occasions. The landlord testifies that the tenant has been given breach letters on October 28, 2010, November 01, 2010, November 05, 2010, February 10, 2011 and May 06, 2011.

The landlord testifies that the tenant was seen outside the building making what appeared to be a drug purchase as money and a small package exchanged hands. The landlord states the tenant admits to using marijuana in the fall of 2010. The landlord testifies that when questioned about conducting a drug deal outside the building the tenant told him he was not buying drugs but was doing a deal with his bookie. The landlord testifies that he informed the tenant that this was also a crime and a breach of their agreement.

The landlord testifies that a tenant in another unit was engaged in drug and sex trade activities. All other tenants were told there was restricted access to this other tenants unit but states he has records of this tenant visiting that unit on six occasions on February 09, 2011 between 12.30 am and 8.30 pm.

The landlord testifies that the tenant has allowed a guest in his unit on a frequent basis. The landlord alleges that this guest was also involved in drug related activities in the building and the police alerted the landlord on March 25, 2011 about the tenants' guest having a warrant out for his arrest for identity fraud. The police asked the landlord to contact them if this person was seen in the building. The landlord states they checked their video surveillance records and found that the tenant had allowed this guest access to the buildings computer room. He states they checked the information on the computers and found that credit cards were being applied for at the tenants address with names of applicants not resident in the building. The landlord testifies that the computer room is for the tenants use only and tenants have to come to the office to get a key or to a tenant volunteer who also holds keys. He states the tenants' guest could not gain access to this room without the tenants' assistance. The landlord states his staff viewed the video tapes and told him they identified the tenants' guests coming and going from the computer room.

The landlord testifies that from the computer records (sample provided in evidence), the police file numbers and the arresting officers information all leads them to suspect the tenants guest of using their computers for this illegal activity. The landlord states he informed the police of the tenants' guests' activity and he was told to delete this information from his computer. Later this person was arrested by the police.

The landlord states that when this guest of the tenants was arrested the landlord and another member of staff were outside the building and heard the tenants guest tell the police that he was a frequent guest of the tenants, the tenant had allowed him to use drugs in his unit, had allowed him access to the computers and the tenant had acquired drugs for the tenant in unit 201.

The tenant disputes the landlords' claims. The tenants advocate states the crime free housing addendum is overly broad and refers to crimes on or near the property. She submits that what the tenant does off the property has no bearing on his tenancy. The tenants advocate states the tenant had confirmed that he was placing a bet with his bookie off the premises and was not purchasing or selling drugs. The tenant testifies that he does use marijuana but not in his unit or the building. The tenant states he has a prescription

from his doctor to use marijuana for pain relief and his prescriptions are delivered daily to the building. The tenant has provided a note from his doctor that says he supports the tenants' use of marijuana.

The tenants advocate cross examines the landlord and asks when the tenant was told not to visit the tenant in unit 201 and was it explained to the tenant that if he did his tenancy would be in jeopardy. The landlord states the tenant was verbally told not to go to unit 201 as the tenant there was in breach of her tenancy agreement and that access to that unit was restricted. The tenants' advocate questions the landlord about the tenants' guest and asks if he warned the tenant that there was a warrant out for the arrest of his guest due to identity fraud. The landlord states the tenant was not warned as this was an ongoing police investigation.

The tenants advocate states if the tenant did not know about the activities of his guest or that a warrant was out for his arrest then how can he be in breach of his crime free housing addendum. The tenants advocate states the landlord has been vague in information given to the tenant. She submits he has provided little evidence to show the tenant was involved in drug use or that it was the tenants guest that committed identity fraud on the buildings computers when many other tenants also had access to this room.

The tenant testifies that the tenant living in unit 201 was physically handicapped and so he used to visit her to do errands. He states he was never involved in any drug related activities or other crimes and denies visiting her in the early hours of the morning of February 09, 2011.

The landlord testifies that the doctors' note is not a prescription for marijuana nor is it a certificate for the legal use of marijuana. The landlord disputes the tenants' claims concerning the previous tenant in unit 201 and states she was an able bodied person who used a wheel chair to gain sympathy. The landlord states he has provided letters from other staff members concerning the tenants' activities and what they witnessed on the surveillance tapes.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlords' evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

Having heard the testimony of both parties and having viewed the documentary evidence for this hearing I find the landlord has not shown that the tenant has breached the crime free housing addendum to his tenancy agreement. The landlord has provided insufficient evidence to show the tenant has used, bought or sold illegal substances on the premises; The landlord has not shown that the tenant has been involved in an illegal activity on the premises and the landlord has not shown that it was the tenants guest who accessed the computers engaging in identify fraud as many other tenants also had access to this room. The landlord has provided written statements from employees but none of these statements have been notarized and no witness were asked to attend the hearing on the behalf of the landlord to submit to cross examination from the tenant. Therefore, I can place little weight on these documents. The landlord has also failed to provide evidence from his surveillance tapes showing the tenant engaging in an illegal activity.

Consequently, in the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

### Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated may 06, 2011 is cancelled and the tenancy will continue

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 06, 2011.

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Residential Tenancy Branch