



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – CNC

For the landlord – OPC, FF

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlord. Both files were heard together. The tenants seek to cancel the One Month Notice to End Tenancy. The landlord seeks an Order of Possession and to recover the filing fee.

I am satisfied that both parties have been served with a copy of the Application and Notice of Hearing pursuant to s. 89 of the *Act*. Both Parties also confirmed receipt of the other Parties' evidence

Both Parties appeared along with two witnesses for the landlord. All persons gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witnesses, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issue(s) to be Decided

- Is the tenant entitled to have the Notice to End Tenancy cancelled?
- If not is the landlord entitled to an Order of Possession?

### Background and Evidence

Both parties agree that this month to month tenancy started on December 15, 2010. Rent for this unit is \$545.00 per month and is due in advance on the first day of each month.

The landlord testifies that he served the tenants with a One Month Notice to End Tenancy on May 29, 2011 in person. This Notice has an effective date of June 30, 2011. The landlord has provided a copy of this Notice in evidence and it shows the following reasons to end the tenancy:

- 1) the tenant or a person permitted on the residential property by the tenant has
  - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - (iii) put the landlord's property at significant risk;
- 2) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that ha
  - (i) damage the landlords property
  - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- 3) The tenant has caused extraordinary damage to the unit/site or property
- 4) The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

The landlord testifies that the tenants have slammed doors when he has tried to talk to them and on one occasion the female tenant slammed her door so hard it rattled the window in adjacent units. The landlord states he has been threatened by the male tenant. The landlord states on May 06, 2011 he saw the female tenant sitting outside the laundry room sucking on a water bong. He states when she saw him she said "it's ok to do it now because the baby is not breast feeding anymore". Later a Constable came to the tenants unit and gave the landlord a file number which he has provided in evidence. Since that time he states family services have also visited the tenants.

The landlord testifies that on May 17 he hand delivered a letter to the tenants reminding them of their tenancy and addendum agreement violations and if there were any further incidents they would be served with a One Month Notice to End Tenancy. He states later the male tenant came to his unit and verbally threatened to have the landlord charged for calling the police. The landlord states the tenants have accused him of spying on them when he is only doing his job.

The landlord states the tenants smoke drugs in their unit and this action is causing damage to the walls of their unit. He states he has smelt marijuana coming from their open windows. The landlord agrees he has not seen the tenants smoking or using drugs in their unit. The landlord states he gave the tenants a warning letter on May 17, 2011 about drug use and states the tenants have signed a Crime free addendum to their tenancy agreement which prohibits the use of drugs on the property.

The landlord testifies that on May 27, 2011 he went to the tenants unit to start the repairs to their bathroom but states he could not continue because the female tenant decided to have an afternoon nap with her baby. The landlord states he gave the tenants some mould killer to use under their sink and in the bathroom but on the day he went to do the repairs it did not appear as if the tenants had used this mould killer despite being told that they had. At this time the tenants asked the landlord to provide them with 24 hour notice of entry to finish the repairs to the bathroom. This was given to the tenants that day effective for May 29, 2011. The landlord states he went back to the unit on May 29, 2011 with the intention of finishing the repairs and was told the tenant's baby was sleeping so to come back later. The landlord returned at 2.00 p.m. and was told to wait another hour. He states he returned for the third time and was then told that the tenants did not think the female tenant and her baby should be forced out of their home while chemicals and paint were used for the repair. The landlord states he told the tenant that the paint would be safe for the baby and would dry in two hours and the toilet liner would also be dry if they left the window open and the door closed then the smell would not affect the baby. The landlord states he was still not allowed to do the repairs.

The landlord states on June 03, 2011 the police were once again at the tenants unit because of loud noise. Shortly after the police left the male tenant accused the landlord of calling the police. Later the police were called again and the tenants were quiet for the rest of the night. The landlord states on June 05, 2011 the tenant's baby was away for the night so the tenants partied

till 9.30 p.m. in the courtyard which disturbed other tenants. The landlord seeks an Order of Possession effective on June 30, 2011.

The landlord calls his first witness who testifies that on April 06, 2011 there was a man on the steps in the complex who was a friend of the female tenants who appeared to be extremely stoned. He states he was concerned about this man falling on to the tenant's baby in that condition. He states he has never seen the tenants using drugs but has smelt dope when he has walked past their window. This witness has provided a typed statement dated April 06, 2011 however in this statement he refers to overhearing a conversation on the last week of April, 2011 when he heard the male tenant say he was dealing drugs. This letter also states he has seen hard drug users entering and exiting the tenants unit.

The tenant cross examines this witness and asks him how he could have heard him say he was dealing drugs at a time three weeks after the letter was dated. The witness states he may have got the dates wrong in the letter. The tenant cross examines this witness and asks him about who wrote the letter as the witness had told the tenants he had not seen the letter and could not type. The witness replied he had a friend type the letter and he signed it. The witness also states that it was his assumption that the visitors to the tenants unit were hard drug users.

The landlord calls his second witness. This witness testifies that on May 13, 2011 the police were called to the tenants unit due to drug use. She said the female tenant wanted to speak to her even when she was told the witness did not want anything to do with her. The witness states the female tenant asked her if she had ever seen the male tenant do E (ecstasy). The witness states the female tenant became aggressive towards her and approached her with her fists clenched. She also states the tenants have taken photos of her without her consent.

The witness states on May 13 she had gone outside in the early hours of the morning and found a large male drug addict looking for the tenant. The witness states the tenants will keep her up at night yelling and shouting and have slandered her to her neighbours. She states she is afraid of them and they are aggressive towards her. The witness also states the corner of the complex by her unit is a designated smoking area. She states she has smelt pot being smoked in this area as the marijuana smell comes through her windows. The witness states the male tenant has also verbally threatened her with the fact that his mother is a Social Worker and will prevent

her seeing her children. The witness states she has seen the female tenant smoking a water bong and was even offered a hoot of this bong. On another occasion a guest of the witness was given a joint by the male tenant when he asked him for a cigarette.

The tenant cross examines this witness and asks her about a man called Dave whom she refers to in her written statement. The tenant replies he is another pot dealer living in the complex who asked a friend of hers to sell E for him. She states he is a friend of the tenants and they became involved in an altercation she had with this man because they were trying to defend their drug dealer. The tenant asks the witness how did she know that the person rooming in the early hours of the morning was looking for the female tenant when there is another tenant with the same name living in the complex. The witness replies he asked for her by name and described her as the one with the baby and husband and that they were 'Carnies'.

The tenant's testify that they have not caused the damage in the bathroom or back wall. They states they told the landlord about the mould issue and he gave them this mould killer but then took it back later. They state the landlord does not make repairs in a suitable time frame and it took five months just to get a smoke alarm. He states the landlord is not dealing with the bathroom repairs effectively and they were willing to leave the unit to give the landlord time to repair the toilet but states the landlord wanted them to leave for another six to eight hours in order to paint.

The tenant testifies that the night the landlord stated they were partying outside was only the second night they had had off from the baby who had gone to grandparents for the night. He states they did not get back from dropping the baby off until 8.00 pm and they sat outside with a few other tenants and had a couple of drinks.

The tenant states the landlord has been harassing his wife and has stalked her. He states he has asked the landlord to leave his wife alone and act appropriately towards her. He states they have never acted aggressively towards the landlord or other tenants.

The tenant disputes the landlord and his witnesses' accusations that he or his wife use drugs. He states his wife is two and half months pregnant and would not use drugs and she does not even own a water bong. He states they have recently taken a drug test with Social Services and

the results were negative. They state because the results were negative they have been allowed to continue to care for their own baby. The tenant states the police searched their rental unit and found no drug related equipment.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses. 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 landlord's evidence is contradicted by the tenants, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The tenants dispute all the landlords and his witnesses claims and the landlord has provided no other corroborating evidence to show that the tenants have significantly disturbed another tenant or the landlord or that they have used drugs on the property as most of the evidence is either an assumption, hearsay or has been contradicted. The landlord has not shown that the tenants have failed to allow him to make repairs to their unit as a landlord has a right to enter a unit after he has given the tenants at least 24 hours written notice and would be able to enter after that time to carry out any required repairs. I also fail to see from the landlords' evidence how the tenants have put the landlords' property at significant risk or how they have caused extraordinary damage to the landlords' property. While the landlord and one of his witnesses have stated the tenants have acted aggressively towards them they have provided no evidence to corroborate this. The landlord has also failed to show what material term of the tenancy agreement the tenants have breached as he has provided insufficient evidence to show they have used drugs on the property which would be a breach of the Crime Free Housing addendum.

I further find with the landlords first witnesses testimony that he has not directly seen any illegal activity taking place at the tenants unit. With the landlords second witness I find there appears to be a history of animosity between the tenants and this witness and I can place little weight on her testimony especially when it is disputed by the tenants.

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.

I would caution the tenants that they must not unreasonable restrict the landlords' access to their rental unit to make necessary repairs after a 24 hour written Notice of entry has been received by them. If they do this could constitute a further eviction notice being issued to them by the landlord.

### Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated May 29, 2011 is cancelled and the tenancy will continue.

The landlord application is 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 23, 2011.

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Residential Tenancy Branch