



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNE, MT  
                                 OPC, MNR, O, FF

### Introduction

This hearing dealt with cross applications by the landlord and tenant. The application by the tenant is to cancel a notice to end tenancy for cause, to cancel a notice to end tenancy for end of employment and more time to make an application. The application by the landlord is for an order of possession for cause, a monetary order for unpaid rent, other and recovery of the filing fee. Both parties participated in the conference call hearing and gave affirmed testimony.

### Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

### Background and Evidence

This tenancy began approximately 3 years ago and the tenants pay monthly rent of \$1300.00.

On July 15, 2011 the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause:

- The tenant has been repeatedly late paying rent
- The tenant has allowed an unreasonable number of occupants in the unit/site
- The tenant's rental unit/site is part of an employment arrangement that has ended and the unit/site is needed for a new employee

The tenants have filed within the required time period to dispute this notice.

The tenants application for 'more time to file an application' was discussed at the start of the hearing and as the tenants have filed their application within the required time period as specified on the notice, more time is not required therefore this portion of the tenants application is dismissed.

The tenant testified that the rental unit has and never was part of his employment agreement with the landlord. The tenant stated that he did originally work for the landlord and that as he now no longer works for him, the landlord has issues with the tenant remaining on the property. The landlord testified that the tenant provided the tenancy agreement to the landlord and acknowledged that the tenancy agreement says nothing about the occupancy of the rental unit being conditional on employment with the landlord.

The tenant stated that the rent, which is paid in cash, is always paid on time and has been throughout the entire 3 years of the tenancy. The landlord refuted the tenant's testimony and referred to the receipts that he has been entered into evidence. The tenant stated that he did not receive the landlord's evidence and the landlord responded by stating that the evidence was served by hand to the tenant's father in-law. The landlord stated that the tenant had called him after the evidence was served and told the landlord that it was 'too much'.

The landlord testified that he did provide receipts to the tenant when the rent was paid as the receipts are part of his record keeping for his taxes. The tenant stated that rent was always paid within 3 or 4 days after the first of each month and the delays are a result of the tenants and landlords availability to meet as the tenant was paying cash. The tenant maintained that never once in the entire 3 year tenancy had the landlord given the tenants a receipt for the rent. T

The landlord in this application is seeking \$450.00 in unpaid rent; \$400.00 for the month of May 2011 and \$50.00 for the month of July 2011. The landlord is also seeking an order of possession for cause.

The tenant acknowledged that his father in-law was residing in a travel trailer on the property but that he was only there 2 days per week as he works out of town. The tenant said that there had never been an issue with the tenant using areas of the landlord's 9 acre parcel next to the tenant's residence before the tenant stopped working for the landlord. The landlord responded by saying that he had never given the tenant permission to park a travel trailer on to the property and to allow it to be occupied. The tenant responded by stating that the landlord had a travel trailer on the property that he uses for employees and that he did not know that his would be an issue.

The tenant referred to the landlord having an issue with him parking his commercial dump truck on the property but that the tenant has since stopped parking it there. The landlord responded by stating that the tenant had been accessing the back of the 9 acre property by a second gate without the landlord's consent and that when the tenant was parking his truck on the property the landlord could not bring his trucks on site as there was not enough space.

The tenant reiterated that he believed the only reason the landlord was now having issues with the tenancy was due to the fact that the tenant no longer worked for the landlord.

The tenants in this application are seeking to cancel a notice to end tenancy for cause.

### Analysis

Based on the documentary evidence and testimony of the parties I find that there is insufficient evidence to uphold the Notice to End Tenancy for Cause or the landlord's request for a monetary order for unpaid rent.

#### Repeated Late Payment of Rent

While the landlord asserted that the tenants have repeatedly paid the rent late and has submitted receipts into evidence, the tenant maintains that receipts have never once in 3 years been provided to the tenants. Consideration must also be given to the fact that because the rent is paid in cash, the rent has historically been paid late as the landlord and tenants have to arrange to meet in person and this is dependent on both their schedules.

As a pattern has been established in the 3 years of this tenancy regarding how and when rent is paid and that it is not always on the first of each month. I therefore find the landlord's claim that the tenant's rent is repeatedly late has no basis and is therefore dismissed.

#### Tenant's rental unit/site is part of an employment arrangement that has ended and the unit/site is needed for a new employee

The rental application submitted into evidence does not reflect any provisions whereby occupation of the rental unit is conditional on continued employment with the landlord. The tenancy agreement is clearly only for rental of the residence on the property. I therefore find the landlord's claim that the rental unit is part of an employment arrangement has no basis and is therefore dismissed.

#### Allowed an unreasonable number of occupants in the unit/site

The rental application stipulates 2 adults and 2 children and the number of occupants residing in the rental unit has not changed. The tenants have however brought another occupant on to the site by allowing the travel trailer to be occupied all be it for only 2 days per week by 1 person.

The tenant believed that occupancy of the travel trailer would be acceptable due to the fact that the landlord has a travel trailer on the property that is sometimes occupied. I therefore find that the tenant should be offered the opportunity to cease using the travel trailer for occupation. The tenant will need to ensure that the trailer is no longer occupied no later than September 10, 2011 and that if the trailer remains occupied or is

occupied again in the future, the record of these events would form part of the landlord's case should it again come before a dispute resolution officer for consideration. I therefore find the landlord's claim that the tenant has allowed an unreasonable number of occupants in the unit/site has no basis and is therefore dismissed.

As the parties directly dispute the validity of the receipts the landlord has entered into evidence it is not possible to determine beyond a reasonable doubt that rent has gone unpaid. Therefore it is not reasonable to award a monetary order for unpaid rent and this portion of the landlord's claim is dismissed.

The landlord's application is dismissed in its entirety.

As the landlord has not been successful in their application the landlord is not entitled to recovery of the \$50.00 filing fee.

I therefore allow the tenant's application and set aside the landlord's Notice to End Tenancy for Cause dated July 15, 2011 with the result that the tenancy continues uninterrupted.

### Conclusion

The notice to end tenancy for cause dated July 15, 2011 is hereby set aside and the tenancy continues in full force and effect.

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: August 25, 2011.

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Residential Tenancy Branch