



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Code:** CNC, CNL, MNDC, OPC, FF

### **Introduction**

This hearing dealt with an application by both the landlord and the tenant. The tenant seeks:

1. To cancel a Notice to End Tenancy given for cause and for landlord's use;
2. A monetary order in the sum of \$33.16; and
3. To recover the filing fee from the landlord for the cost of this application.

The landlord submitted that he has withdrawn the Notice to End Tenancy for landlord's use and now seeks:

1. An Order of Possession based on a Notice to End Tenancy for Cause; and
2. To recover the filing fee from the landlord for the cost of this application.

Both parties appeared at the hearing and gave evidence under oath.

### **Background, Analysis and Findings**

The landlord testified that he issued the Notice to End Tenancy for Cause because the tenant threatened him and because the tenant used his vehicle to block the drive-way from other tenants, that the tenant has changed the locks on the rental unit, that he converted a parking area into a gym, that he has unlicensed vehicles on the property and because he has a dumpster in the drive-way. The landlord played a recording of a telephone call the tenant made to the landlord in which the "f" word is used repeatedly. Further, on the recording the tenant states that if the landlord wants trouble from his tenants he will get it. There was a further recording from another tenant complaining about this tenant, followed by three messages from this same tenant asking that the landlord return her call. The landlord says he has a police file number because the police attended the rental unit.

The tenant says his tenancy agreement allows him to have 4 vehicles parked on the property however the landlord had one of his vehicles towed. Because of this the

tenant parked another of his vehicles to block the drive-way to prevent his other vehicles from being towed. The tenant testified that the recorded phone call played at the hearing was a "bad choice" the tenant says the phone call followed a yelling match he and his landlord had with respect to the towing. The tenant says this was a one-time incident. The tenant says the other tenants are fine with him.

The tenant produced his tenancy agreement which states he was allowed to change the garage into a gym. The tenant says that the landlord provided the locks and the tenant changed the locks and provided the landlord with a key. The tenant says the landlord provides only one garbage can for 3 suites so the tenant, who works for a waste management company, has a dumpster delivered to the property from time-to-time to deal with the garbage.

The tenant says he has a fixed term lease ending May 15, 2013 and he has invested in the rental unit and he wishes to stay. The tenant says he will accept \$5,000.00 as a buy out of the lease if the landlord wants him to move other than that he wishes to stay.

The landlord says the tenant is a liar and that he has misled the landlord. The landlord says he never initialled the addendum pages which are attached to the tenancy agreement. The landlord says other tenants in the rental unit complain of this tenant.

## **Findings**

The parties agree that there was an incident which resulted in the expletive riddled phone call that the tenant made to the landlord. The landlord believes the statement in which the tenant "warns" the landlord that there will be trouble amongst the tenants in the rental unit is a threat. The tenant has explained that this call was a bad choice, made in the heat of the moment, following an earlier argument regarding the towing of the tenant's vehicle. While the tenant's words were a bad choice on his part, I do not find them sufficient to state that they were a threat which necessitates the ending of this tenancy.

With respect to the rest of the landlord's allegations, the onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I will therefore allow the tenant's application and the Notice to End Tenancy issued for cause in this matter is set aside and this tenancy shall continue as though no notice had

been issued. The landlord's application for an Order of Possession is therefore dismissed.

With respect to the tenant's claim for recovery of \$33.16 for registered mail costs, the only costs I am able to award is recover of the filing fee. As the tenant has been successful in his application I will allow the tenant recovery of that fee and he may deduct \$50.00 from his next rental payment.

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: September 12, 2011.

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Residential Tenancy Branch