



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** CNC, CNL, MNDC

### **Introduction**

This hearing dealt with an application by the tenant for an order to set aside notices to end tenancy for cause and for landlord's use of property. Both parties attended the hearing and had opportunity to be heard.

### **Issue to be Decided**

Does the landlord have grounds to end this tenancy? Is the tenant entitled to compensation for loss of quiet enjoyment?

### **Background and Evidence**

The tenancy began on November 01, 2010. The rental unit is located above a store and consists of a two bedroom suite. The landlord rents from the owner of the unit and sublets a room to the tenant. Both parties share a common kitchen and bathroom.

On July 30, 2011, the landlord served the tenant with a one month notice to end tenancy for cause. The tenant disputed the notice in a timely manner.

Based on this notice, the landlord made application to put an early end to this tenancy and to obtain an order of possession. This matter was heard on August 25, 2011 and in a decision dated the same date, the Dispute Resolution Officer determined that the landlord had not proven her case and therefore the landlord's application was dismissed. The tenant filed a copy of this decision into evidence.

On August 26, 2011, the landlord served the tenant with a notice to end tenancy for landlord's use of property. The tenant visited the Residential Tenancy Branch Office and amended his application to include his intention to dispute the notice to end tenancy for landlord's use of property in addition to the notice to end tenancy for cause.

The notice to end tenancy for cause alleges that the tenant has

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

Both parties filed detailed statements of events and problems that are ongoing between the two parties. During the hearing, the parties presented testimony and strongly disputed any point the other party attempted to make. The landlord stated that she would be filing an application to resolve this matter, in the Supreme Court of Canada. About twenty five minutes into the hearing, the landlord stated that she had a headache and her health did not permit her to continue with the conference call. The landlord hung up and exited the hearing.

The tenant has also applied for compensation for loss of quiet enjoyment due to the “*campaign of harassment*” that he has to endure from the landlord. The tenant stated that the landlord verbally abuses him, cuts off his access to the internet, causes damage to his plants, etc. The tenant is claiming \$800.00 as compensation.

### **Analysis**

In order to support the notice to end tenancy for cause, the landlord must prove at least one of the grounds alleged, namely that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

In order to support the notice to end tenancy for landlord's use of property, the landlord bears the burden of proving that she acted in good faith when she served the tenant with the notice to end tenancy for landlord's use of property.

The landlord removed herself from the hearing without fully testifying and proving her reasons for serving the tenant with either notice to end tenancy. Therefore the notices to end tenancy are set aside and the tenancy will continue.

In most respects there is vast contrast in the tenant and landlord' testimony and the relationship has progressively deteriorated over the term of the tenancy making resolution of issues, at best, frustrating for both parties.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy. Such interference might include intentionally removing or restricting services to the tenant.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed.

The landlord and tenant had different versions of what went on in the rental unit. The tenant's case is entirely dependent on his version of events, a version which is disputed by the landlord. I have no basis for favoring one version over the other.

Accordingly, I find that the tenant has not proven his case for compensation for the loss of quiet enjoyment.

**Conclusion**

The notice to end tenancy is set aside and the tenancy will continue. The tenant's claim for compensation for the loss of quiet enjoyment 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: September 08, 2011.

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Residential Tenancy Branch