



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for cause (the Notice).

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Has a 1 Month Notice to End Tenancy been issued and served to the Tenant in accordance with the *Residential Tenancy Act*?
2. If so, has the Landlord met the burden of proof for the reasons the Notice was issued?

### Background and Evidence

I heard undisputed testimony that the Tenant and his father entered into a written fixed term tenancy agreement with the Landlord that began on February 1, 2010 and switched to a month to month tenancy after April 30, 2010. Rent is payable on the first of each month in the amount of \$1,050.00 and on January 5, 2010 the Tenants paid \$526.00 as the security deposit for their two bedroom rental unit which is located in a complex consisting of five apartment buildings.

The Landlord affirmed that she has been resident manager for just over a year beginning in July and that prior to her employment the Tenant's brother began to occupy the unit with him and his father. She advised that the Landlord's policy for two bedroom units is to allow only up to four occupants and no more.

The Landlord stated that she believes there are too many occupants in the rental unit and she does not like who the Tenant's brother's (the brother) friends are. She referred to the brother's friends as "street people" when she said she does not like them being

around the rental property. Both her and the maintenance person have witnessed the brother visiting with these street people in the parking garage, outside below the balconies where they sit and visit on a concrete wall, and walking towards other buildings in the complex. Then towards the end of August they saw someone standing on the Tenant's balcony and there was a bicycle on the ground so they asked this person if he lived there. This person answered yes. As a result the Landlord determined there are too many people living in the unit because the Tenant's mother sometimes lives there too.

The Landlord confirmed she did not speak to the Tenants about this alleged new occupant and did not issue the Tenants any written warnings. Instead she issued a 1 Month Notice which was personally served to the Tenant at the rental unit on August 31, 2011 for the following reasons:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord

She stated that she is concerned with what the brother's friends might do so she issued the Notice to have them move. Also, since issuing the Notice the Tenant has informed the Landlord that their patio door has been broken by someone who threw something at the window.

The Tenant affirmed receipt of the 1 Month Notice to End Tenancy for cause on the RTB form. He testified that there were only three people living at the rental unit, himself, his father and his brother which is supported by the written statements provided in his evidence. He confirmed that his mother stays at the rental unit at times when she is ill but she is only there as a guest.

The Tenant confirmed that on October 11, 2011, someone followed his brother to the rental complex and threw a rock at their patio door and broke it. This person was not a guest of theirs and was not invited onto the property. He simply followed his brother there and caused damage to the building. They called the police as soon as this happened and created a file number. The police issued a no contact order against this person so if this person is seen around the rental unit they will be calling the police. The Tenant stated that as soon as this incident happened he informed the Landlord and provided her with the police report information so she could arrange to get the door repaired as soon as possible.

### Analysis

Section 47(1) of the Act provides that a Landlord may end a tenancy by giving notice to end the tenancy if the Tenant has allowed an unreasonable number of occupants in the unit; and/or significantly interfered with or unreasonably disturbed another occupant or the Landlord.

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Landlord has the burden to prove the reasons for issuing the Notice to end the tenancy. The only evidence before me from the Landlord was verbal testimony and I find the disputed verbal testimony insufficient to meet her burden of proof. Accordingly I hereby cancel the Notice.

### Conclusion

The 1 Month Notice to End Tenancy dated August 31, 2011 is HEREBY CANCELLED and is of no force or 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: October 14, 2011.

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