



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, OLC

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy, a monetary order and an order compelling the landlord to comply with the Act. Both parties participated in the conference call hearing.

At the hearing, the tenant withdrew the claim for an order compelling the landlord to comply with the Act. This decision addresses the two remaining claims.

At the outset of the hearing the tenant had advised that he had a witness, T.A.

### Issues to be Decided

Should the notice to end tenancy be set aside?

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

The landlord testified that she served the tenant with a one month notice to end tenancy for cause (the "Notice") by posting it on the door of the rental unit on August 30, 2011. The tenant testified that he received the Notice on September 1. The Notice alleges that the tenant has breached a material term of the tenancy agreement, has assigned or sublet the unit without consent, that the tenant or his guests have significantly interfered with or unreasonably disturbed another occupant or the landlord and that the tenant or his guests have seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord testified that on or about July 8, 2011, the tenant's guest, P., was asked by the building manager to remove his bicycle from the stairwell. P. argued with the manager and threateningly asked the manager to "take this outside to settle." The tenant asked P. to cooperate with the manager and P. told the manager he would be waiting for him outside. The landlord sent the tenant a warning letter advising that further incidences with guests would result in the issuance of a notice to end tenancy.

The tenant testified that the building manager had sexually harassed P. on prior occasions which he believed led to P.'s actions on July 8.

The parties agreed that the tenant had 2 dogs in the rental unit and that the landlord asked him to remove the animals as the tenancy agreement prohibited pets. The July 8 warning letter also included a final warning that the dogs had to be removed or the tenant would be served with a notice to end tenancy. The tenant testified that since receiving the letter he had gotten rid of one of the dogs but had not yet been able to relocate the second dog. The tenant expressed frustration that other tenants were given a grace period to relocate their animals but he was not. He also argued that the landlord did not offer to move him to a lower floor on which pets were allowed as had been offered to other pet owning tenants. The landlord testified that such moves were only facilitated when a transfer request had been made and stated that the tenant had not made such a request.

The landlord testified that on August 30, 2011, she and the building manager attended at the rental unit where they were met by T.A. who advised that he had lived in the unit for several months and further said that the tenant was living in another unit with his sister. Shortly after that conversation, T.A. accosted a resident of the building who was a disabled senior and accused her of causing him to lose his accommodations. The landlord testified that the building is largely populated by seniors and that several are now afraid of the tenant's guests. The landlord entered into evidence a copy of the tenancy agreement which provides that the number of occupants in the rental unit is restricted because the rent is geared toward income and the number of occupants and their collective income determine the housing needs of the tenant and the amount of rent he is obligated to pay. The landlord alleged that T.A. was living with the tenant and that his son was also living with him for approximately 6 months. The landlord entered into evidence an email in which the author confirmed that the ministry (presumably the Ministry of Employment and Income Assistance) had been advised by the tenant's son that he lived with the tenant from February 2011 to July 2011.

The tenant acknowledged that T.A. had acted inappropriately with the other building resident but maintained that he had since apologized and the two were on good terms. The tenant insisted that T.A. had not stayed with him for more than 8 days over a 2 year period and that his son had only stayed for a few days. The tenant argued that T.A. suffered from a mental illness and stated that we couldn't believe anything he said, so he was not surprised that he had invented a story about living in the unit. The tenant offered to produce T.A. as a witness, but I advised that as the tenant had insisted that T.A. was not credible, his testimony would have little value. The tenant opted not to call T.A. as a witness.

The tenant seeks \$2,000.00 in compensation for loss of quiet enjoyment. He claimed that the landlord posted posters of him indicating that he was wanted by the police throughout another building operated by the landlord. The landlord denied having posted the posters.

### Analysis

The landlord bears the burden of proving at least one of the allegations in the Notice. While I am not satisfied that the tenant has assigned or sublet the rental unit or seriously jeopardized the health, safety or lawful right of another occupant or the landlord, I find that his guest T.A. has unreasonably disturbed another occupant, that his guest P. significantly interfered with the landlord and that he breached a material term of the tenancy agreement and did not correct that breach within a reasonable time after written notice to do so.

I accept that the tenant made efforts to control his guest P. and had this been the only incident in which a guest of the tenant had caused problems, the incident standing on its own may not have offered sufficient grounds to end the tenancy. But together with the actions of T.A. less than a month later, after the tenant had been warned in writing that further problems with his guests would result in the issuance of a notice to end tenancy, I find that the landlord is justified in ending the tenancy. The tenant is or should be aware that his guests cannot contravene the Act and may not pose any threat to other occupants or the landlord. I find that both P. and T.A. have caused a significant interference and unreasonable disturbance.

I further find that the tenant breached a material term of the tenancy agreement by keeping pets in the rental unit and that he did not rectify that breach within a reasonable period. The landlord warned the tenant in writing that he was breaching the tenancy agreement by keeping pets as early as September 2010 and again in July 2011 and the tenant did not act within a reasonable period to rectify the situation. I find that his failure to correct that breach has established grounds to end the tenancy.

For these reasons, I decline to set aside the Notice. I accept that the Notice was received by the tenant on September 1, 2011 and therefore the effective date is October 31, 2011.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme

Court of British Columbia and enforced as an order of that Court. I note that the parties are free to negotiate an alternate date to end the tenancy if they so choose.

In order for the tenant to establish his monetary claim, he must prove that the landlord disturbed his quiet enjoyment of the rental unit. Even if the landlord posted the notices in another building, and I make no finding on that issue, I find that it is not substantially related to the tenancy and accordingly I dismiss the monetary claim.

### Conclusion

The tenant's claim is dismissed and the landlord is granted an order of possession.

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 05, 2011

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Residential Tenancy Branch