



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to obtain an order to cancel a One Month Notice to End Tenancy for Cause and to recover the cost of the filing fee from the landlord for this application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

### Issue(s) to be Decided

Should the one month notice to end tenancy be cancelled?

### Background and Evidence

The tenancy began on May 9, 2008. Rent in the amount of \$350.00 per month was payable on the first of each month. A security deposit of \$425.00 was paid by the tenant. The parties agreed that it is a material term of the tenancy agreement that there is no alcohol, no drugs and no sex trade workers allowed in the building. This building houses people who are fighting addictions and other social issues and these material terms are required for the support of the tenants.

The parties agree that on October 25, 2011, the tenant was served with a one month notice to end tenancy for cause. The notice alleges that the tenant has engaged in activity that has, or is likely to:

- Damage the landlord's property
- Adversely affect the quiet enjoyment, security, safety of physical well-being of another occupant or the landlord.

The landlord testified that this is the second notice to end tenancy for cause. The first one was set aside on July 7, 2011, as the tenant had corrected his behaviour. In the July decision the tenant was strongly cautioned that he had been warned and that any future aggression or profane outbursts could result in another notice being issued.

The landlord testified that on July 28, 2011, one of the other occupants in the building informed him that he and another person witnessed the tenant (TH) take the faux plant that was in the lobby of the building, and throw it outside and that the tenant (TH) tried to destroy the plant. The occupant told the landlord the he picked the plant up from outside to put it back in the lobby.

The landlord testified that in a video recording of this incident it shows the tenant (TH) taking the faux plant and throwing it out the door, in a fit. The plant was then returned by another occupant. It later shows that at 12:40am the tenant (TH) was removing the plant from the building again. It has never been returned. The landlord further testified that this plant was donated and brightened up the lobby. The landlord has filed three witness statements that confirm the above incident.

The tenant testified that he did throw the faux plant outside; he said he saw a bed bug on the faux plant and wanted it out of the building. When it was returned to the lobby, he got rid of it. He did not speak to the landlord about it seeing any bed bugs on the faux plant or about getting rid of the faux plant and that this plant was originally taken out of the trash and given to the landlord.

The landlord testified that on August 19, 2011, the tenant let a sex trade worker in to the building. The video footage between 1:15am – 1:34am shows the tenant removing a magazine from the amenity room and going down the handicap ramp and onto the sidewalk outside. A female immediately crosses the road and meets the tenant at the bottom of the handicap ramp. The tenant then comes back into the building without the magazine and a few minutes later this sex trade worker is seen entering into the building, the magazine having been used to keep the door propped open and allow her entry in to the building, she is seen exiting the building at 1:34am.

A witness (1) statement filed for the landlord says that he approached the handicap door and noticed that the door was wedged open with a magazine. As he began to open the door and pull the magazine out, he heard a young woman running towards him. She said “hold the door open!” When he entered the building this woman was right beside him, he was suspicious as the door was propped open and asked who she was and she responded that she lived here. This woman then barged past him and went quickly to the elevator.

A second witness, (2), statement filed on behalf of the landlord says that he saw this girl run by him in the hallway and go into the elevator; he knows her as a working girl and alleges she is drug addict. He was about to say something to her, but he heard someone else entering the building. When this person entered the building, he was told that he had found the door propped open with a magazine and that he asked the girl that just went by if she lived in the building and she said yes, for two months. Witness (2) told him that this girl does not live in the building. At this time the tenant (TH) came into the hallway and asked what was going on and the witnesses told him about the girl. The tenant (TH) said he was going to check it out and went into the elevator.

The tenant testified that he acknowledges that the tenancy agreements say that no sex traders are allowed in the building. He said there is no proof that she is a sex trade worker and denies the allegation.

On another incident, the landlord testified that on October 1, 2011, one of the other occupants was using the phone in the common TV area, when the occupant asked the tenant (TH) to be quiet as he was making loud noises and he was unable to hear the person on the telephone. The tenant (TH) started to shout and swear and call him names. The landlord further testified that this occupant is handicapped and was not threat to the tenant (TH).

The landlord has filed a witness statement from the occupant that was using the telephone confirming the incident.

A witness (3) statement filed by the landlord observed this incident. Witness (3) statement says that a male occupant was using the telephone and that he asked the tenant (TH) nicely to be quiet, but the tenant (TH) began screaming and swearing at the male on the phone and even threatened him.

The tenant testified that he was practising his trumpet when this guy on the telephone started yelling at him to be quiet; he said this person was very rude and he yelled back at him.

The landlord testified that on October 15, 2011, he received a written complaint from another occupant in the building. The letter said that the tenant (TH) was upset because he could smell cigarette smoke. Smoking is allowed in the building. The tenant (TH) went to his unit, the door was open and the tenant (TH) told him to keep his door closed if he was going to smoke and when he told the tenant (TH) that he had not smoked for the last few hours, the tenant (TH) lost it and started screaming obscenities

at him. The letter also indicates that he does not feel safe with the tenant prowling the hallways looking for a confrontation.

The tenant testified that he has talked to this person three times in the past about the smell of cigarette smoke coming from his room and to keep his door closed. The smell of cigarette smoke really bothers him. The tenant further testified that he did raise his voice and told him to, "just keep your damn door closed".

### Analysis

The landlord bears the burden of proving that he has grounds to end tenancy. I find based on all of the above testimony and after considering all of the written submissions, submitted at this hearing, that the landlord has provided sufficient evidence to show that the landlord has cause to end tenancy as set out in section 47 (1)(d) of the Act

I find that on July 28, 2011, the tenant removed the faux plant from the building without permission. The faux plant was the property of the landlord.

I find that on August 19, 2011, the tenant did prop the door open to the building with a magazine to let a sex trade worker into the building, breaching a material term of the tenancy agreement.

I find that the tenant on October 1, 2011, did act aggressively toward another occupant and his outburst was profane. He has been cautioned in the past with warning letters and was cautioned in the July 7, 2011, Dispute Resolution Officers decision.

I find that the tenant on October 15, 2011, did affect the quiet enjoyment of another occupant, in his testimony he indicated that he has gone and talk to this occupant three times prior to this incident and wants him to keep his door shut.

Therefore, I find that the notice to end tenancy is valid and the tenancy will end on November 30, 2011.

Conclusion

I find that the notice to end tenancy is valid and in accordance with the Act. The tenancy will end on November 30, 2011.

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: November 21, 2011.

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Residential Tenancy Branch