



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNC, FF

### Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make submissions to me.

The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

The Landlord submitted documents to the Residential Tenancy Branch yesterday, copies of which were served to the Tenant yesterday. The Tenant acknowledged receipt of the Landlord's evidence however it was not available to me at the time of the hearing and it was not accepted as evidence for these proceedings, given it was not served in accordance with the timelines established by the Rules of Procedure.

The Tenant applied to amend the Application for Dispute Resolution to reflect the correct spelling of the Landlord's name, which the Landlord provided at the hearing. The Landlord did not dispute the application and the Application for Dispute Resolution was amended accordingly. The correct spelling of the male Landlord's name is reflected on this decision.

### Issue(s) to be Decided

The issues to be decided in this decision are whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside and whether the Tenant is entitled to recover the fee for filing this Application for Dispute Resolution.

### Background and Evidence

The Tenant submitted a copy of a written tenancy agreement that shows this tenancy began on April 01, 2011, although the parties agree the Tenant moved into the rental unit on March 22, 2011. The tenancy agreement shows that parking for 2 vehicles is included in the rent.

The male Tenant stated that they typically park two vehicles on the right side of the parking area in front of the residential complex although he often has difficulty parking in that area as the Landlord's guests park in the driveway of the complex, thereby preventing him from accessing the parking area.

The Landlord initially stated that the Tenant was permitted to park on the right side of the parking area but he later stated that no special area was designated as parking for the Tenant.

The Landlord stated that on October 31, 2011 the Landlord had a relative helping him work at the house; that the relative had parked his vehicle in the driveway in a manner that prevented the Tenant from accessing the parking area; that the Landlord asked the Tenant to park on the street; that the Tenant refused to park on the street and he parked in a manner that prevented his relative from exiting the driveway; that the Tenant blocked the driveway for approximately 25 minutes; that the police were eventually called; and that the Tenant moved his vehicle at the request of the police.

The male Tenant stated that he arrived home on October 31, 2011 to find a pickup truck blocking his access to the parking area; that he asked the Landlord to move the truck; that the Landlord refused to move the truck; that the Landlord advised him that he was not allowed to park on the residential property; that he subsequently did park on the road but not in a manner that prevented the Landlord's guest to move his truck from the driveway; that the police attended the property and gave him permission to park on the residential property.

The Tenant submitted a copy of a police report that shows the police attended the residential property at the request of the Tenant. The police report indicates the dispute related to whether or not the Tenant was permitted to park a work vehicle on the residential property. There is nothing in the report that indicates the Tenant was preventing a vehicle from leaving the residential property.

The Landlord stated that on November 20, 2011 he had a large number of guests parked on the residential property; that his guests prevented the Tenant from parking where he typically parks; and that the Tenant parked in the driveway, thereby preventing his guests from leaving. The male Tenant stated that there was no dispute regarding parking on, or about, November 20, 2011.

The Landlord and the Tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the Tenant indicating that the Tenant was required to vacate the rental,

albeit they disagree on the precise date of service. The female Tenant stated that it was served on November 01, 2011 and the Landlord stated that it was served on October 30, 2011 or October 31, 2011. The reason stated for ending the tenancy was that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Landlord stated that he also wishes to end this tenancy because ever since the police were called to the property on October 31, 2011 his daughter is afraid of the male Tenant. He stated that his daughter will no longer sleep alone and he is concerned she will not use the yard when the weather improves.

### Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the Landlord has provided insufficient evidence to show that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. In reaching this conclusion I considered the following factors:

- The parties agree that the incident on October 31, 2011 was instigated by the Landlord's guest preventing the Tenant from accessing the parking area which the tenancy agreement entitles him to use and by refusing to provide access to the area in a timely manner. As the actions of the Landlord's guest contributed to the dispute on this date, the Landlord must accept a significant amount of responsibility for disturbances that arise from this inconvenience
- There is no evidence that the Tenant objected to being prevented from using his parking space in an abusive or unacceptable manner
- The Landlord submitted no documentary evidence, such as a photograph, to corroborate his statement that the Tenant parked his vehicle in a manner that prevented the Landlord's guest from leaving the driveway on October 31, 2011 or that refutes the Tenant's statement that he did not park his vehicle in a manner that prevented the Landlord's guest from leaving the driveway on that date
- The police report shows that the Tenant contacted the police, which lends credibility to the Tenant's claim that the Landlord was interfering with his right to access the property and sheds doubt on the Landlord's claim that the Tenant was preventing someone from leaving the property.
- The Landlord submitted no documentary evidence, such as a photograph, to corroborate his statement that the Tenant parked his vehicle in a manner that prevented the Landlord's guest from leaving the driveway on, or about November 20, 2011 or that refutes the Tenant's statement that he did not park his vehicle in a manner that prevented the Landlord's guest from leaving the driveway on that date

While it is clear to me that the Landlord and the Tenant are in conflict regarding parking on the residential property, I find that the Landlord is responsible for a reasonable portion of that conflict. I therefore find that the Landlord cannot rely on the arguments resulting from this conflict as a reason to end this tenancy.

To avoid further disputes in regards to this matter, the Landlord is reminded that the tenancy agreement requires him to provide the Tenant with two parking spaces and that he should make every effort to ensure he or his guests/family do not park in a manner that prevents the Tenant from parking on the property.

While I accept that the Landlord's daughter may now be afraid of the male Tenant as a result of the conflict regarding parking, I find that the Landlord cannot rely on this as a reason for ending the tenancy, given that he contributed to the conflict and is, therefore, at least partially responsible for his daughter's fear of the male Tenant.

### Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47(2)(d)(i) of the Act, I hereby set aside the One Month Notice to End Tenancy, dated October 31, 2011, and I order that this tenancy continue until it is ended in accordance with the *Act*.

As I find the Tenant's application has merit, I hereby authorize the Tenant to deduct \$50.00 from their next rent payment, as compensation for the filing fee paid for this Application for Dispute Resolution.

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 22, 2011.

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Residential Tenancy Branch