

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This is an application filed by the Tenant to cancel a notice to end tenancy for cause and a monetary order for the recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. Both parties acknowledged receiving the evidence package of the other party. As both parties have attended and have acknowledged receiving the evidence of the other, I am satisfied that both parties have properly been served under the Act.

### Issue(s) to be Decided

Is the Tenant entitled to an order to set aside the notice to end tenancy for cause?

### Background and Evidence

Both parties agree that this Tenancy began on February 1, 2012 on a fixed term for 1 year ending on January 31, 2012. The monthly rent is \$2,200.00 payable ½ on the 1<sup>st</sup> and ½ on the 15<sup>th</sup> of each month as indicated on the submitted copy of the signed tenancy agreement.

Both parties agreed that the Landlord served the Tenants with a 1 month notice to end tenancy for cause. The notice is dated February 6, 2012 and the Landlord states that the Tenant was served on February 7, 2012. The effective date of the notice is March 31, 2012. The Landlord stated during the hearing that he wished for an end to the tenancy based upon the 1 month notice to end tenancy for cause.

The Landlord's stated reasons for cause are:

Tenant has allowed an unreasonable number of occupants in the unit/site. The Landlord also states that having a nanny constitutes an illegal sublet and is considered a breach of a material term of the tenancy. The Landlord states that this is listed #2 as an addendum to the signed tenancy agreement. The Tenant disputes this. The Landlord states that the Tenants have retained a live-in nanny and that this constitutes an unreasonable number. Both parties agree that there are no provisions listed in the

tenancy agreement for the number of occupants. The Landlord states that there was a verbal agreement with the Tenant that this Tenancy would be limited to 2 adults and 2 children family as occupants. The Tenant disputes this. The Landlord has provided copies of another Tenants Tenancy Agreement and states that this is their normal practice to enter into a fixed term Tenancy that ends and that both parties are agreeable to enter into a new Tenancy Agreement. The Landlord also states that the live-in nanny places an additional wear and tear not considered in the tenancy agreement.

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 Tenant disputes this. The Landlord states that the Tenants had a violent altercation with another Tenant in the building. The Tenant disputes this. The Landlord has not provided any evidence of violence, but has provided a letter dated February 19, 2012 from the other Tenant who states that she feels vulnerable and is feeling extremely apprehensive and afraid for her safety as a result of this incident. The Tenant states that there was an altercation where there was some yelling, but that no further incidents have occurred. The Tenants also state in their direct testimony that they are now able to co-exist with the other Tenant without further incidents after a meeting not long ago before this hearing.

### Analysis

On a balance of probabilities based upon the documentary testimony of both parties, I find that the Tenant has significantly interfered with or unreasonably disturbed another occupant. The letters from the other Tenant stating that she is afraid for her safety based upon the interactions with the Tenants are not in dispute. The Tenant states that there is no further conflict with the other Tenant, but has not provided any supporting evidence other than her direct testimony that the other Tenant is no longer in fear. The Landlord continued throughout the hearing to seek enforcement of the notice to end tenancy and as such, I find that the Landlord's notice dated February 6, 2012 is upheld. The Landlord is granted an order of possession for the effective date of the notice on March 31, 2012 at or before 1:00 pm.

I find based upon the documentary evidence and the direct testimony of both parties that the Landlord has not established a claim to end the tenancy under the following reason of an unreasonable number of occupants in the unit, that the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so or that the Tenant has assigned or sublet the rental unit/site without the Landlord's written consent.

Conclusion

The Tenant's application is dismissed without leave to reapply.  
The Landlord is granted an order of possession for March 31, 2012.

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: February 29, 2012.

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Residential Tenancy Branch