



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – CNC, O

For the landlord – OPC, FF

### Introduction

This hearing was convened by way of conference call in repose to both Parties applications for Dispute Resolution. The tenant has applied to cancel the One Month Notice to End Tenancy and other issues. The landlord has applied for an Order of Possession for cause and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party for this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the tenant entitled to have the One Month Notice to End Tenancy cancelled?
- Is the landlord entitled to an Order of Possession based on the reason given on the One Month Notice to End Tenancy?

### Background and Evidence

Both Parties agree that this month to month tenancy started on May 15, 2011. The tenant rents a basement suite for a monthly rent of \$475.00 including utilities. Rent is due on the 14<sup>th</sup> day of each month in advance.

The landlord testifies that he served the tenant with a One Month Notice to End Tenancy on January 10, 2011. This notice was served to the tenant by posting it to the tenant's door and was therefore deemed served three days after posting on January 13, 2012. The Notice has an effective date of February 14, 2012 and gave one reason to end the tenancy; the tenant or a person permitted on the residential property by the tenant has

- (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

The landlord testifies that the tenant has abused the use of utilities in her unit. The tenant was sent warning letters on January 06, 2012 about her abuse of the utilities as the utilities are paid by the tenants residing in the unit upstairs. The tenant has been repeatedly asked to turn off her lights in her unit when she is not at home. The landlord testifies that there was no improvement or indication from the tenant that she would cooperate in turning the lights off so the landlord served the tenant with the Notice to End Tenancy on January 10, 2012. During the four days between the warning letter and the Notice the landlord testifies that he drove by the tenants unit many times and found the exterior and interior lights were left on. The landlord testifies that the tenant also uses a heater in her unit.

The landlord testifies that he has received complaints from the upstairs tenants about this tenant's use of the hot water. The landlord testifies that there are three people living in the upper unit who have complained that this tenant has three or four baths a day using all the shared hot water. The upper tenants have also complained that this tenant does lots of baking and leaves the exhaust fan on in her bathroom late at night. With the sound of water running for this tenant's bath and the exhaust fans this wakes the upper tenants at night.

The landlord testifies that this tenant has also caused parking problems for the upstairs tenants. This tenant drives a large van which she parks without leaving adequate space for the upper tenants' vehicle.

The landlord testifies that due to this tenants actions it has significantly impacted and disturbed the upstairs tenants and they have now threatened to move from the upper unit.

The landlord testifies that the previous tenants residing in the upper unit also had similar issues with this tenant and the landlords have provided an e-mail in evidence from the previous tenants detailing the issues they experienced.

The landlord testifies that the previous upstairs tenants moved out and this tenant was the sole occupier of the building from October 01, 2011 to December 15, 2011. The landlord testifies that he received a Hydro bill for \$91.00 and a letter from the Hydro Company informing the landlord that the hydro consumption had increased. The landlord argues that this shows the tenant used extra hydro because no other tenants were living in the house at that time. The landlord has not provided a copy of previous hydro bills to show what the increase in hydro would be. The landlord testifies that this tenant's excessive use of the hydro puts the other tenants in financial hardship.

The landlord requests that the One Month Notice to End Tenancy is upheld and seek an Order of Possession effective as soon as possible.

The tenant testifies that she has not significantly interfered with or disturbed the upper tenants or the landlord. The tenant testifies that she has to deal with noise from the upper tenants unit and where as she is one tenant living alone there are three tenants upstairs. The tenant testifies that one of the upstairs tenant's behaviour towards her is now escalating towards harassment and she has reported this to the Police.

The tenant testifies that she does not have three or four baths a day. The tenant states she has a shower or bath at the beginning and end of her day. The tenant explains that she has an erratic work schedule which does not 'gel' with the upper tenants life's. The tenant explains that she often works 16 hour days and is often out of her unit for long periods when she is working away. The tenant denies the landlords claims that she bakes all day or that she leaves her lights on when she is away from her unit. The tenant testifies that she purchased a remote control for her outside lights as they are operated from the upstairs tenants unit but found the upper tenants removed the control for these lights leaving it on the wet ground which destroyed it. The tenant testifies that she has purchased timers for her indoor lamps so this would regulate the times the lamps came on for security and for

light when the tenant came home late at night. The tenant disputes the landlords photographic evidence which shows her lights on and states these pictures show dim lights from her lamp and the tenant states the pictures are undated and show no time frame when the pictures were taken.

The tenant argues that the landlord states that she did not comply with the warning letter given to her on January 06, 2012 the tenant testifies that as this was served to her late on a Friday night she could not do anything with the letter until Monday when she sought advice at the Residential Tenancy Branch. The tenant states the next day she received the One Month Notice from the landlord. Therefore with this short time frame the tenant was not able to resolve these issues with the landlord.

The tenant calls her witness EH. The witness testifies that when she was visiting the tenant at the tenants unit on January 05, 2012 the witness could hear the upstairs tenants walking around there unit and could hear people talking and using the bathroom. The witness also testifies that the tenants unit is not very big but she noticed the tenant had to have her own heat source as the tenant does not have the ability to control the heat in her unit.

The landlord declines to cross examine this witness.

The tenant testifies that she has a thermostatically controlled heater that she has to use when the tenants upstairs either turn off the heat or turn it down. The tenant testifies that she has not significantly disturbed the upstairs tenants but rather they have disturbed her. The tenant testifies that they own amps and a guitar while she only owns a laptop. The tenant testifies that the upper tenants use more hot water than she does as there are three tenants living there with the mother and daughter being at home all day.

The tenant testifies that she has not caused problems by parking her van in her designated parking spot. The tenant testifies that the landlord photos clearly show there is sufficient room for the tenants van and the other tenant's car to be parked in their designated bays.

The tenant testifies that she is happy to set up a time for the landlord to come into her unit to install a different type of exhaust fan that does not come on with the light every time she uses the bathroom, The tenant is also happy for the landlord to address issues with the noise generated from closing doors in both units

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The landlord appears to concentrate his evidence on the fact that the tenant leaves her lights on and consumes an excessive amount of hydro which the upstairs tenants have to pay for. I do not find that this action, if it was proven, would significantly disturb or interfere with the upstairs tenants or the landlord. It was the landlord's choice at the start of this tenancy to include utilities in the tenants rent and a tenant is therefore entitled to make use of these utilities. The tenant has testified that she has a thermostatically controlled heater which she uses if there is insufficient heat in the basement unit and has purchased timers for her lamps so they are not on all the time. The tenant disputes that she has three to four baths and day and argues that she often works 16 hours a day and just has a shower or bath at the beginning and end of her day. Again I do not find that in doing so that this would significantly impact on the other tenants and if the tenants working life is not the same as the new tenants living in the upper unit the landlord cannot expect this tenant to adjust her life or work schedule to fit in with that of the other tenants.

The landlord argues that the tenant uses her wash room late at night and in doing so the sound of the exhaust fan wakes the other tenants. I find this is an unreasonable claim made by the landlord as a tenant is entitled to use her wash room at any time during the day or night and the landlord has no evidence to show that the tenant leaves her bathroom light on

and subsequently the fan when she is not at home. The landlord has a responsibility to protect the right to quiet enjoyment for both sets of tenants I would suggest that the landlord looks at ways to reduce the noise from the washroom fan in this tenants unit.

The landlord argues that the tenant has used an excessive amount of Hydro when she was the sole tenant residing in the unit. As the tenant has no way to control the heating in her unit I find it is reasonable for the tenant to have a small supplementary heater that is thermostatically controlled. I also find this would have no bearing on the reason given on the One Month Notice to End Tenancy.

With regard to the landlords arguments that the tenant has significantly disturbed the other tenants by parking her larger vehicle in a manner that restricts the upper tenants' use of their parking bay. I find from the landlord photographic evidence that there appears to be sufficient room to park two vehicles in this space. I would caution the tenant however to ensure she parks in such a manner to ensure her wheels are straight and in a manner that allows the upper tenants to get in and out of their car.

The landlord has provided no evidence to show that the tenant bakes for a whole day or in doing so that this would significantly disturb the upper tenants. Even if the tenant did choose to do so the tenant is entitled to bake as often as she likes in her own unit and a landlord is not entitled to place restrictions such as this on the tenant's use of her rental unit.

Consequently, in the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

As the landlords have been unsuccessful with their application the landlords must bear the cost of filing their own application.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated January 10, 2012 is cancelled and the tenancy will continue.

The landlords' application is dismissed without leave to reapply.

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 15, 2012.

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Residential Tenancy Branch