



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, MNDC, OLC

### Introduction

This hearing was convened by way of conference call in repose to the tenants application to cancel the One Month Notice to End Tenancy for cause; For an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch. The tenant provided evidence to the landlord in advance of this hearing; however the landlord did not provide evidence to the tenant in advance of this hearing. The tenants' evidence and the testimony of the parties have been reviewed and are considered in this decision.

### Preliminary Issues

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the Dispute Resolution officer may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find the tenant has applied for a Monetary Order for money owed or compensation for damage or loss and for an Order for the landlord to comply with the *Act*. As these issues are unrelated to the main issues which is to cancel

the Notice to End Tenancy I find it is appropriate to dismiss these portions of the tenants claim with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to cancel the Notice to End Tenancy?

Background and Evidence

Both parties agree that this tenancy started on November 15, 2011. Rent for this unit is \$1,250.00 per month and is due on the first day of each month in advance.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy on January 24, 2012. This Notice was left for the tenant on the dryer in the laundry room. The tenant accepts that she did receive the One Month Notice on January 24, 2012 I therefore consider the Notice to be sufficiently served for the purpose of the *Act*.

The Notice has an effective date of February 24, 2012 and gave the following reasons to end the tenancy:

- 1) The tenant has allowed an unreasonable number of occupants in the unit
- 2) 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,
- 3) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has or is likely to
  - (i) Damage the landlord's property
  - (ii) Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord of the residential property, or
  - (iii) Jeopardize a lawful right or interest of another occupant or the landlord.

The landlord testifies that the tenancy agreement allows for the tenant and her three daughters to reside in the rental unit. The landlord testifies that the tenant has allowed her eldest daughter to also reside in the rental unit as the landlord has seen this daughter there regularly.

The landlord testifies that since moving into the unit the tenant and her daughters have significantly interfered with and disturbed the landlord. The landlord testifies that she lives in the basement unit and the noise from the tenants unit goes on until the early hours of the morning. The landlord states the tenant agreed that any noise would cease after 10.30 at night but the tenant has not adhered to this agreement. The landlord states she has heard noise from an animal running across the tenant's floor even though the tenant is not allowed to keep pets, the landlord states she has been disturbed by music blaring and by yelling and screaming from the tenants unit above. The landlord testifies that it is so bad she is unable to live in her unit and has to go and stay with friends.

The landlord testifies that the tenant or her daughters have been smoking marijuana in the garage and unit and the smell from this filters into the landlords unit and can be smelt mostly in the garage and laundry room. The landlord testifies she has also smelt it in the tenants unit. The landlord testifies that she spoke with the tenant about this problem but the tenant did not respond to the landlord. The landlord testifies that the smell of marijuana affects the landlord quiet enjoyment of her unit and is an illegal activity.

The landlord testifies that the tenant has kept bags of garbage in and around the property. The garbage bags left outside have been torn open by animals and garbage has been strewn across the property.

The landlord testifies that there was an occasion when the landlord saw one of the tenant's daughters standing outside the property in a sweater that the landlord claimed

she owned. The landlord testifies that she spoke to the tenant about this and the tenant told the landlord it was her daughter's sweater. The landlord states the next day this sweater which had been missing from her storage room had been returned.

The landlord requests that the One Month Notice to End Tenancy is upheld and verbally requests an Order of Possession at the hearing.

The tenant disputes the landlord's claims that the tenant eldest daughter has moved into the rental unit. The tenant testifies that her eldest daughter comes to visit the tenant at the unit and has stayed overnight on occasion and has babysat for the tenant's other children.

The tenant disputes the landlord claim that the tenant or her children are noisy. The tenant states the landlord will complain about every noise and can hear the tenant and her children walking and talking in their unit. The tenant testifies that neither she nor her daughters play loud music after 9.00 at night as she has a two year child. The tenant also disputes that there is a pet running around the unit. The tenant testifies that she did look after her daughter's cat for a few days. The tenant states both she and her daughters have to walk on egg shells when they are in their unit with fear of disturbing the landlord. The tenant states she does not even have company over in case they were to disturb the landlord.

The tenant disputes the landlord claim that her daughters smoke marijuana in or around the premises. The tenant states she has a two year old daughter and would not allow marijuana to be smoked around her. The tenant agrees her daughter does smoke cigarettes but is not allowed to smoke inside the house or garage.

The tenant testifies that when they moved into the unit the previous tenants had left a number of garbage bags outside which the landlord did not remove. The tenant testifies that one of her daughters picked up all the strewn garbage from these bags and all the

garbage has been removed. The tenant states there were some bags in her entrance way which were full of recycling and this has also been removed.

The tenant disputes the landlords claim that the tenant's daughter went into the landlord's storage room and took a sweater belonging to the landlord. The tenant testifies that her daughter has a number of hooded style sweaters.

The tenant requests that the One Month Notice is cancelled.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. 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.

I have considered both arguments in this matter and find that the landlord has not shown that the tenant has allowed an unreasonable number of occupants to live in the rental unit and has not shown that the tenants eldest daughter has actually moved into the tenants home and was not merely visiting; The landlord has not shown that the tenant or the tenants children have significantly disturbed the landlord beyond normal living noise; the landlord has not provided sufficient evidence to show that the tenant or the tenants children have been smoking an illegal substance in the property or have stolen items from the landlord storage area; and the landlord has not shown that there is garbage strewn around the property that is the tenants responsibility. Therefore, 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.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated January 24, 2012 is cancelled and the tenancy will continue.

The remainder of the tenants application not heard at the hearing today is dismissed with 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 27, 2012.

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Residential Tenancy Branch