



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, MNDC, OLC, RP, LAT, RR, FF

### Introduction

This hearing was convened by way of conference call in repose to the tenants application to cancel a Notice to End Tenancy for cause; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; for an Order for the landlord to comply with the Act, Regulations or tenancy agreement; for an Order for the landlord to make repairs to the unite, site or property; for authorization for the tenant to change the locks to the rental unit; to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlords for the cost of this application.

The tenant and her Advocate and the landlords 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 and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

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; for an Order for the landlord to comply with the Act, Regulations or tenancy agreement; for an Order for the landlord to

make repairs to the unite, site or property; for authorization for the tenant to change the locks to the rental unit; to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided. As these issues are unrelated to the main issue which is to cancel the Notice to End Tenancy for cause I find it is appropriate to dismiss these unrelated items with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to have the One Month Notice to End Tenancy for cause cancelled?

Background and Evidence

Both parties agree that this month to month tenancy started on April 01, 2011. Rent for this unit is \$1,000.00 per month and is due on the first day of each month in advance. The tenant's unit is one in a fourplex. The landlords live in one of the four units and the other two units are occupied by other tenants.

The landlord testifies that they served the tenant with a One Month Notice to End Tenancy on April 19, 2012 by posting this Notice to the tenant's door. The Notice was an effective date of May 31, 2012 and gives 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,

The landlord testifies that the tenant has allowed another adult and three children to move into the tenants two bedroom unit. The tenant also has two children so there were a total of seven people living in the tenants unit from the beginning of April. The landlord

testifies that he asked the tenant who these people were and if they were just visiting and were told they were friends of the tenant who were staying for an undetermined time while her friend found work.

The landlord testifies that these occupants were doing laundry in the shared laundry room, the hot water supply for the fourplex and a parking bay was being used by these additional occupants. The landlord testifies that the last time they saw these occupants was around the end of April. The landlords contend that this additional family were not guests but were occupants.

The landlord testifies that they have received complaints from other tenants concerning extreme noise from this tenants unit. Other tenants have been disturbed by the noise of the tenant's children and/or the other children staying in the tenants unit, running around, banging doors and making noise which is beyond reason. On occasions the other tenants have complained that the banging causes items on their shelves to bounce around. The landlord has provided two complaint letters from these other tenants dated April 11 and April 12, 2012. The landlord testifies that each time a complaint came in about this tenant he went to speak to the tenant about the noise but the tenant either denied that the noise was coming from her unit or said any noise was not loud enough to disturb anyone else. The landlord agrees that they have heard some noise from the tenants unit but not enough to bother them. The landlord states they live above one of the other tenants. The landlord states they have a responsibility and obligation to protect all the tenants right to quiet enjoyment.

The landlords orally request that the One Month Notice to End Tenancy is upheld and request an Order of Possession effective on May 31, 2012.

The tenant testifies that she does not require the landlords' permission to have guests in her home and her friend and her three children were temporarily staying with the tenant from April 04 to April 29, 2012. During that time the tenant states her friend and the two eldest children went on a week's trip and the tenant looked after the youngest child. The

tenant testifies that her friend did not pay any rent and was simply a guest. The tenant states the tenancy agreement in place states she is allowed to have guests and does not stipulate how long the guests can stay for.

The tenant testifies that the noise that the other tenants complained about was not coming from her unit as her children and the children of her guest all went to bed at a reasonable hour. The tenant testifies however that the tenant living above her does not put her children to bed and that tenants children have been running and screaming as late as 2.00 a.m. on weekends. The tenant testifies that there has been an occasion when the tenant upstairs will drink and then has knocked on the tenant's door at midnight disturbing the tenant at that late hour. The tenant also states the upstairs tenant's children just enter the tenants unit without knocking.

The tenant testifies that on April 12, 2012 there was a fight going on in the unit upstairs which also caused a disturbance. The upstairs tenant has an abusive boyfriend who visits and drinks with the upstairs tenant. This boyfriend parks his shopping cart outside and it has been there since April 03, 2012. The tenant states her children are often woken at night from noise from the upper tenant's computer as it is in the room above her children's bedroom.

The tenant testifies that she has brought her concerns to the attention of the landlord but the landlord refuses to listen to her. The tenant states she therefore disputes both reasons given on the One Month Notice to End Tenancy and seeks to have the Notice cancelled.

The tenant testifies that from May 03, 2012 she is staying at a friend's property with her children as she can no longer stay in her own unit. The tenant states her belongings remain in her unit and her rent has been paid for the unit however the tenant states she is looking for alternative accommodation.

### 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. The landlord has provided two letters from the other tenants residing in the fourplex however these letters have not been sworn before a Notary. The landlord did not ask either of these tenants to appear as witnesses for this hearing to submit to cross examination by the tenant. Therefore, I can place little weight on the contents of these letters as the tenant has disputed them. From the testimony presented, I am of the opinion that there is some animosity between the tenants residing in the fourplex due to the complaints made and I am not satisfied that the landlord has investigated the complaints from any of the tenants thoroughly to determine which tenants are causing the disturbances. As this it results in one persons word against that of the other than the burden of proof is not met.

With regard to the landlords' reason on the notice regarding additional occupants, there is no provision to determine the difference between an occupant and a guest. Therefore, the burden of proof falls to the landlords to provide corroborating evidence to show that the family, staying in the tenants unit, throughout April, 2012 were occupants and not just guests of the tenant.

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 April 19, 2012 is cancelled and the tenancy will continue. As the tenant has been

successful in setting aside the Notice, she is entitled to recover her **\$50.00** filing fee for this proceeding and may deduct that amount from her next rent payment when it is due and payable to the landlord.

The tenant is at liberty to file a new application for the remainder of her claim.

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: May 16, 2012.

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Residential Tenancy Branch