



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNC, AAT, FF

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy and an order to allow access to (or from) the unit.

The hearing was conducted via teleconference and was attended by the tenant's agent and the landlord's agent. The tenant attended the first hearing and only after I called her into the hearing. I requested the tenant attend the 2<sup>nd</sup> hearing but she did not attend.

The hearing was originally convened and neither party provided a substantial amount of documentary evidence. I adjourned the hearing for both parties to submit previous correspondence on the issues related to the Application.

During the hearing, the landlord did not verbally request an order of possession should the tenants be unsuccessful in their Application.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause; to an order allowing access to and from the rental unit for the tenant or the tenant's guests and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 30, 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agreed the tenancy began on March 1, 2012 as a month to month tenancy for the monthly rent of \$615.00 due on the 1<sup>st</sup> of each month with a security deposit of \$307.50 paid.

Both parties provided a copy of a 1 Month Notice to End Tenancy for Cause issued on May 15, 2012 with an effective date of June 30, 2012 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord testified that the tenant had parked a van on the street for which the landlord requested on May 6, 2012 to have the tenant move it into the residential property parking lot. There is no dispute the tenant did this.

On May 9, 2012 the landlord submits that the tenant's husband, who is not a tenant, was found sleeping in the van in the parking lot. The landlord provided a copy of a letter dated May 9, 2012 written to the tenant advising her that if she was going to allow other non-tenants with access to her van she would have to park it elsewhere.

The tenant's agent testified that he was just waiting for his wife to return home and that he was not living in the van as implied by the landlord's agent.

The landlord also submitted a letter dated May 12, 2012 written to the tenant about an interaction with the tenant's husband when he was at the front door of the property. She testified that she was at the front door when the tenant's husband was peering into the windows; she motioned for him to go away and he started a disturbance.

The landlord states that she later received many complaints from other tenants regarding the disturbance. The landlord testified that this was the event that led to the issuance of the 1 Month Notice.

The tenant's agent, who also is the tenant's husband and therefore the other party involved in the altercation on May 12, 2012, testified that it was the landlord who was causing the disturbance and that he just wanted to get in to see his family.

The tenant's agent's witness testified as to what was reported to him on May 12, 2012 at which time he had interaction with both the tenant's agent and the landlord's agent and that he determined at that time that there was no reason for police involvement at the time.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) 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, or
  - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

From the evidence and testimony provided I accept that the landlord has had some interactions with the tenant's husband, who is not a tenant of the residential property. As the husband is not a tenant, the tenant becomes responsible for the husband's behaviour if she has allowed him on to the residential property and he causes any disturbances.

From the testimony provided by both parties, I find the landlord has not established that the tenant gave her husband permission to either live or sleep in the van or that she had provided her husband with access to the property on May 12, 2012.

Particularly on May 12, 2012 the events occurred at the front door prior to the husband obtaining access to the property from the tenant. Section 47 clearly requires the disturbances to be caused by the tenant or a person **permitted on the residential property by the tenant**.

As the events of May 12, 2012 occurred prior to the husband gaining access by the tenant permitting him on the property, I find the landlord cannot rely upon this event as a cause that the tenant had any control over. As such, I find the landlord has failed to establish cause to end the tenancy.

From the testimony as well, I find that the landlord's actions on May 12, 2012 did restrict access to the residential property by the tenant's husband. However, I also find that the landlord at the time did not have any reason to believe the tenant had granted the tenant's husband permission to enter the residential property or rental unit.

As such, I find the tenants have failed to establish the landlord has restricted access to the tenant or their guests and I dismiss this portion of the tenants' Application.

### Conclusion

For the reasons noted above I order the tenant may cancel the 1 Month Notice to End Tenancy for Cause issued on May 15, 2012 and I find the tenancy to be in full force and effect.

I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the tenants for this application.

I order the tenants may deduct this amount from the next rent payment in accordance with Section 72(2)(a).

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: June 25, 2012.

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Residential Tenancy Branch