

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened in response to an application by the Tenant for an Order cancelling a Notice to End Tenancy for Cause pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

The Tenants and Landlords were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the Notice to end tenancy?

### Background and Evidence

Neither Party provided any evidence in advance of the Hearing. Neither Party provided a copy of the Notice to End Tenancy for Cause (the “Notice”) but there is no dispute that Notice lists the following cause:

- The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

There is no dispute that the Notice, dated June 28, 2012, was served personally on the Tenants on June 28, 2012 and has an effective date of July 31, 2012.

The Landlord is represented by its agent who is a real estate agent. The Agent states that as he is bound by privacy laws and agency he is unable to provide evidence of certain matters such as names of potential buyers. The Agent states that the Landlord was unable to attend the Hearing as the Landlord was too distraught. The Agent states that the unit was listed for sale on April 25, 2012 and that the next day the Agent contacted the Tenants to inform them of the procedures that would be taken to sell the unit. The Agent states that the Tenants refused to provide the Agent with a key to the

unit, refused to allow showings until after 12 noon, restricted the number of people attending the showings to three persons, and refused to allow showings without a Tenant present. The Agent states that the Tenants also refused to allow photos of the interior of the unit and that contact with the Tenants could only be by telephone. The Agent states that one of the Tenant's cell phone does not work.

The Agent states that during May and June 2012, numerous showings were cancelled because the Tenants did not return phone calls. The Landlord states that the first showing occurred on May 16, 2012. The Landlord states that a tour of the property was agreed to by the Tenants for June 12, 2012 but was then cancelled by the Tenants on June 11, 2012. The Agent states that another agent arranged for a showing on June 25, 2012 at noon and that this agent informed the Agent by a later email that during the showing, one of the Tenant's was sleeping in a bedroom. The Agent states that the email also reported that one of the Tenants called the agent at 9:45 p.m. after the showing that day to inform the agent of concerns with the property such as noisy garbage trucks. The Agent argues that the Tenants wish to discourage real estate agents from taking on the sale and that the unit, as a saleable product, should have been sold within a month. The Agent also argues that the actions of the Tenants are meant to stop the sale of the unit.

The Tenants state that the Landlord told them that she would do whatever she can to get the Tenants out of the unit even if she has to sell the unit. The Tenants state that the showing was cancelled on June 12, 2012 as the time had been agreed to without knowing that the one Tenant who was to have been home that day for the showing had an MRI scheduled for that day and would not be able to be at the unit for the showing. The Tenant states that she was previously in an accident and cannot tolerate noise and light due to severe pain. The Tenants state that they did agree to some showings before noon and some showings did occur before noon but that due to the one Tenant's severe pain and intolerance to noise and light, they were unable to accommodate the Agent's morning showings. The Tenants state that on the June 25<sup>th</sup> showing, the agent was given permission to enter the bedroom and bathroom even though she was in the

bedroom at the time. The Tenants state that their cell phones are working and have never been shut down and that only one of the other Tenants has received calls from the Landlord or its Agent. This Tenant states that as he is at work it is difficult for him to take calls and that the Tenants asked that the Agent call the house land line and leave messages for them to respond to in the evening.

The Tenants state that they did refuse to provide the keys to the unit as they have two dogs that they do not wish to get out of the unit. The Tenants state that they have told people attending showings that they love the unit and never “trashed” the unit. The Tenants state that they only once spoke to the agent and only in relation to the loud garbage. The Tenants state that they have never spoke to other agents about the unit. The Tenants state that in the first 30 days of the unit being listed they received no calls to show the unit. The Tenants state that they did not refuse photos of the house and that the Landlord or its Agent has never showed up to take photos.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Given the Tenants’ denials of interference with the showings or sale of the unit, considering that the Tenants’ evidence is persuasive and noting that the Landlord provided no evidence to support or corroborate its statements of interference, I find that the Landlord has failed to substantiate on a balance of probabilities that the Tenants significantly interfered with or unreasonably disturbed another occupant or the Landlord. Accordingly, I find that the Notice is not valid and that the Tenants are entitled to a cancellation of the Notice. The tenancy continues.

### Conclusion

The Notice is cancelled and the tenancy continues.

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: July 26, 2012.

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Residential Tenancy Branch