



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC and FF

### Introduction

his hearing was convened on an application by the tenant to have set aside a Notice to End Tenancy for cause dated May 31, 2012, received on June 4, 2012, and setting an end of tenancy date of July 31, 2012. The tenant also sought to recover the filing fee for this proceeding from the landlord.

### Issue(s) to be Decided

Has the landlord provided sufficient evidence to warrant ending the tenancy for causes cited including: repeated late payment of rent, putting the property at significant risk; illegal activity causing damage to the property and jeopardy a lawful right of the landlord; fail to repair and breach of a material term of the rental agreement.

### Background, Evidence and Analysis

The landlord and tenant in this matter are former spouses and they are in agreement that title to the rental unit is held by the landlord and this is a residential tenancy.

The tenancy is under a fixed term rental agreement beginning October 1, 2003 and set to end when tenant vacates or when the youngest child of the landlord and tenant reaches the age of 19. Rent is at a reduced rate of \$850 per month in lieu of child support and the parties share custody of their children.

During the hearing, the landlord stated, and the tenant concurred, that the rent for April 2012 had been paid late, between the 4<sup>th</sup> and 6<sup>th</sup> of the month. The landlord stated January 2012 rent had also been late, but the tenant disagreed and noted that, often, the landlord delayed depositing cheques.

The landlord had no further proof of three late payments within the previous 12 months, the benchmark for establishing repeated late rent. While he stated that the late payments caused substantial inconvenience in his making mortgage payments, the tenant pointed to an email urging him to deposit the March 2012 rent payment. Apparently, the method of rent payment has been putting the cheque under the landlord's mat. It was suggested to the parties that a direct deposit or similar system might serve them better.

The tenant referred to an email the landlord sent to her on February 27, 2012 stating that he had an opportunity to purchase a property he had been interested in for 13 years, but that he could not afford two mortgages. He enquired as to when she planned to leave the rental unit and subsequently attempted to negotiate an agreement to end the tenancy for a monetary settlement. The tenant suggested that the Notice to End Tenancy of May 31, 2012 should be interpreted in that context.

In any event, I find that the landlord has not met the burden of proof to establish three late payments in the previous 12 months and I decline to uphold the notice on that cause.

The landlord further claims illegal activity, submitting into evidence the tenant's brother's criminal record and alleging that storage of stolen property in the rental unit could jeopardize his property. The tenant stated that her brother had stayed with her for short periods on occasion as a guest, but that he had never been involved in anything illegal while visiting. Contrary to the landlord's assertion, the tenant stated that the police had never attended the rental property because of or during her brother's visits.

I find that the fact of a criminal record of a guest of the tenant does not in itself establish illegal activity and I cannot uphold the notice on that cause.

The landlord further alleges that the tenant has caused damage to the property by failing to prune shrubs around the home, allowing the foliage to lie in contact with cedar siding. Under the rental agreement, the tenant is responsible for lawn care, flower beds and pruning of shrubs.

The tenant stated that pruning is an ongoing task and conceded that at the time her photographs were taken, regular trimming was due and she was arranging with her lawn care service provider to do the work.

On the basis of the photographic evidence before me, I could not find that the shrubbery has run wild nor is there a degree of neglect that would warrant ending the tenancy.

The parties are also in dispute over repair of the garage door and opener.

The landlord stated that he believed the door was damaged by the tenant's brother gaining entry to the home through the door and that neighbours had seen him enter that way. The tenant stated that it may well have been caused by the children who have on occasion lifted the door manually to get in the garage.

The tenant stated that she had advised the landlord of a problem with the door in June 2011 but that he had not attended to view it until September 2011 and dropped off a new motor for the opener. The repair remained incomplete at the time of the hearing.

While this is not a claim before me, I did advise the parties that repair of the door is the duty of the tenant as the problem occurred while she was responsible for the rental unit and the tenant agreed that she will see to its repair forthwith.

However, given that the tenant did report the matter to the landlord in a timely manner, I do not find sufficient cause to end the tenancy provided the tenant has the repair completed in the near future as she has agreed.

Finally, the landlord in setting support of his contention that there have been a number of ongoing problems with the tenancy leading to his severe frustration, noted that the gas meter has recently been removed.

The tenant stated she was not aware of the removal, but stated she has not used the gas fireplace for five years and had reported to the supplier that she would not be using gas from then on.

I do not find sufficient cause to uphold the Notice to End Tenancy of May 31, 2012. The notice is set aside and the tenancy continues.

As I find the tenant's delay in pruning and repair of the garage door contributed to this dispute, I decline to award the filing fee for this proceeding.

Conclusion

The Notice to End Tenancy of May 31, 2012 is set aside and the tenancy continues.

The tenant is ordered to attend to the pruning of shrubbery as per the rental agreement and to repair of the garage door forthwith.

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 3, 2012.

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Residential Tenancy Branch