



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, O

### Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel the One Month Notice to End Tenancy for cause.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to give evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and some evidence 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.

### Issue(s) to be Decided

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

### Background and Evidence

The tenant states that this tenancy started on June 01, 2012 for a fixed term tenancy which is due to expire on May 31, 2013. Rent for this unit is \$1,300.00 due on the first day of each month.

The agent for the respondents testifies that the tenants unit is owned as a joint venture between themselves and another person who has rented this unit to the tenant without prior knowledge or permission of the respondents. The tenant's landlord owns a 50

percent share of the unit and the other two owners own a 25 percent share each. On or about April 20, 2012 one of the employees at the building advised the respondents that someone was moving into the unit. The unit was listed for sale and the respondents went to the unit and found some items in the unit. The respondents returned to the unit on April 23, 2012 and left a note for the tenant informing the tenant that the unit was owned as a joint venture and was being rented without the permission of the respondents and the tenant was trespassing.

The respondents' agent testifies that the assistant for the other owner (the tenant's landlord) called the respondents and the respondents informed the landlord's assistant that they did not want to rent the unit. The respondents then called their attorney who in turn called the landlords attorney to inform the landlord that the tenant had no entitlement to the unit.

On April 29, 2012 the respondents saw a moving truck at the unit and went to speak to the tenant to inform the tenant that the unit was for sale and not for rent. The tenant informed the respondents that she had to provide 12 posted cheques for her rent to her landlord and she had only provided six post dated cheques in her landlord's name. This also included the cheque for the security deposit.

The respondents' agent testifies that they have not been given any of the rent money. The respondents' appreciate that the tenant has been misguided by the other party calling himself her landlord.

The respondents' agent testifies that the tenant was served with a One Month Notice to End Tenancy by the respondents on June 18, 2012. This Notice 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,
- (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) Put the landlord's property at significant risk;

The respondents agent testifies that they were told the tenant had people sleeping on her balcony; there had been complaints from the commissionaires of loud music and disruptive behaviour by the tenant; having the tenant living in the unit has affected the landlords right to enter or sell the property; the property will lose value through wear and tear; and there will be tax implications to the respondents resulting from the tenancy.

The tenant disputes the respondents' claims the tenant testifies she received an eviction notice on the day she moved into the unit. The tenant states she moved into this unit and signed a tenancy agreement with a landlord. The tenant disputes the reasons given on the One Month Notice and testifies that she keeps the unit immaculate.

The tenant testifies she found out that the unit was up for sale the day she moved into the unit and testifies that she did find a letter from the respondents on the day she moved in. The landlord's assistant took the letter and told the tenant not to worry about it.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I must first address the issue of the tenancy. When a tenant has rented a unit from a landlord then that person is the tenant's landlord. Other parties making a claim on the property do not affect the tenancy and is a dispute between the owners of the property which should not involve the tenant.

The respondents have issued a One Month Notice to the tenant however this Notice is invalid as the respondents are not the tenant's landlord and have no legal right at this time to issue the tenant with a Notice to End Tenancy. As one of the legal owners of the rental unit has rented the unit to the tenant than the tenancy has been entered into in good faith by the tenant.

The respondents argue that they had no knowledge of the unit being rented and the other party in the venture rented the unit without their permission. I have no jurisdiction to alter the terms of a tenancy agreement and add additional landlords to the tenancy agreement. Section 14 of the Act states:

- 14** (1) A tenancy agreement may not be amended to change or remove a standard term.
- (2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

Consequently the tenant's application to cancel the Notice must succeed and the One Month Notice is therefore cancelled.

The tenant chooses not to call her witness who is her landlord for this rental unit. I strongly suggest that the respondents seek legal advice and address this matter in another legal forum.

### Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated June 18, 2012 is cancelled and the tenancy will continue.

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 12, 2012.

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Residential Tenancy Branch