



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNC; OLC

### **Introduction**

This Hearing was scheduled to hear the Tenant's application to cancel a *One Month Notice to End Tenancy for Cause* (the "Notice") issued June 25, 2012 and for an Order that the Landlord comply with the Act, regulation or tenancy agreement.

Both parties gave affirmed testimony at the Hearing.

The Tenant stated that her advocate served the Landlord with her Notice of Hearing documents, but she did not know when. The Landlord's acknowledged that he received the Notice of Hearing documents and copies of the Tenant's documentary evidence. The Tenant acknowledged receipt of the Landlord's documentary evidence on July 17, 2012.

### **Preliminary Matters**

The Tenant sought an Order that the Landlord comply with the Act, regulation or tenancy agreement but did not provide details with respect to what section of the Act or regulation, or what term of the tenancy agreement she was referring to. Therefore, this portion of her application was dismissed **with leave to reapply**.

### **Issue(s) to be Determined**

Has the Landlord provided sufficient evidence that the tenancy should end for the reasons contained in the Notice?

### **Background and Evidence**

The Landlord's agent gave the following affirmed testimony:

The Landlord issued the Notice on June 27, 2012, and served the Tenant on the same day.

The Landlord's agent testified that there was a Hearing on October 6, 2011, with respect to the same issues. At that Hearing the parties agreed that the tenancy would be reinstated if the Tenant complied with certain conditions: to keep her door closed

and not to disturb other occupants. The Landlord provided documents that were provided in evidence at the earlier Hearing.

The Landlord's agent stated that a neighbour of the Tenant's has complained to the Landlord by e-mail a number of times. The neighbour complains of the Tenant yelling profanities and disturbing the peace. Copies of the neighbour's e-mails were provided in evidence.

The Landlord's agent testified that he wrote to the Tenant on June 12, 2012, warning her that her tenancy was in jeopardy because of the continuing complaints from her neighbour. He stated that the Tenant disturbed the peace again on June 20 and 25, 2012. The Landlord's agent testified that the neighbour called the police on June 25, 2012, who attended at the rental property and broke up the party.

The Tenant gave the following affirmed testimony:

The Tenant testified that she did not cause any of the disturbances that she is alleged to have caused. She stated that on June 25, 2012, there was a noisy party but that the people causing the noise were there to see other occupants in the rental property. She stated that, with the exception of having a beer with them a few months ago, she no longer parties outside with the other occupants or their guests.

The Tenant testified that she doesn't keep her door open since she promised not to at the earlier Hearing.

**Analysis**

In a situation where a tenant seeks to cancel a notice to end tenancy, the onus is on the Landlord to provide sufficient evidence that the tenancy should end for the reasons provided on the Notice.

In this case, the Landlord seeks to end the tenancy because the Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed **another occupant** or the Landlord;
- seriously jeopardized the health or safety or lawful right of **another occupant** or the Landlord; and
- put the Landlord's property at significant risk.

(emphasis added)

I find that the Landlord did not provide sufficient evidence that the tenancy should end. There is insufficient evidence that it is the Tenant who is having the noisy parties and no evidence that she continues to leave her door open.

The neighbour who complained in e-mails is **not an occupant** of the rental property. The Landlord stated that she is the owner of a home beside the rental property. Therefore, there was insufficient evidence that an occupant was being unreasonably disturbed. Nor was there sufficient evidence that it was the Tenant who was causing disturbances. In one of the neighbour's e-mails, she states, "It has been men yelling all day. I haven't heard any women."

The neighbour did not attend the Hearing to give oral testimony with respect to the identity of the Tenant, or for the Tenant to be able to cross-examine the neighbour's testimony.

The Landlord provided a copy of a Decision from a Hearing that took place on December 8, 2011, which dealt with an application from another occupant for compensation for loss of quiet enjoyment arising from the Tenant's alleged behaviour. This application was dismissed. The Dispute Resolution Officer noted, "On a question from the landlord, the witness stated that he had lived in the building for about 10 years and that socializing among tenants, including consumption of beverage alcohols, was a norm among most tenants."

Based on the evidence before me I find it probable that some of the occupants of the building are causing a disturbance, but that the Landlord has failed to provide sufficient evidence that it is the Tenant or her guests that are to blame for the disturbances or that she has seriously jeopardized the health or safety or lawful right of **another occupant** or the Landlord or put the Landlord's property at significant risk.

Therefore the Tenant's application to cancel the Notice is granted.

### **Conclusion**

The Notice to End Tenancy issued June 25, 2012, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

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 30, 2012.

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Residential Tenancy Branch