



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated July 26, 2012.

### Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?

### Background and Evidence

This fixed term tenancy started on June 27, 2012 and expires on December 31, 2012. Rent is \$730.00 per month. The rental unit is a one bedroom apartment approximately 550 square feet in area. On July 26, 2012, the Landlord, T.C., served the Tenant in person with a One Month Notice to End Tenancy for Cause dated July 26, 2012. The grounds alleged on the Notice were as follows:

- The Tenant has allowed an unreasonable number of occupants in the unit;
- 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 of another occupant or the landlord;
  - Put the landlord's property at significant risk;
- The Tenant has engaged in illegal activity that has, or is likely to:
  - Damage the landlord's property;
  - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- Tenant has not done required repairs of damage to the rental unit;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord claimed that on one occasion, the Tenant allowed 7 people to stay in the rental unit for a period of 2 days and then let 4 of those people stay a further 2 days. The Landlord claimed that the Tenant continues to have up to 10 people per day coming and going from the rental unit. The Tenant denied these allegations and claimed that he had one friend who was going to move in but ended up staying with him for only a couple of days. The Tenant also claimed that he only had a few friends visit him at a time for a few days and denied that people came and went on a daily basis.

The Landlord also claimed that the Tenant has been disturbing other occupants of the rental property by asking them for cigarettes, and by him and his guests making noise prior to 7 a.m. The Tenant admitted that he approaches other occupants to buy cigarettes from them but said he did not see a problem with that. The Tenant denied making noise and claimed that no other tenants have approached him about it. The Landlord said other tenants have complained to him about the noise and that he has brought it to the Tenant's attention.

The Landlord further claimed that the Tenant and his guests have left fire doors and a gate to the property open both of which pose safety risks to the person and property of other occupants. The Landlord said he has warned the Tenant about not doing these things but he continues to do so with the result that a bicycle has been stolen and lawn ornaments damaged. The Landlord also claimed that the Tenant and his guests have moved around furniture in the lobby of the building and that on at least one occasion, he had to ask the Tenant late at night to stop a guest from doing this. The Tenant denied all of these allegations.

The Landlord claimed that the Tenant damaged a screen door on his patio and that it is now missing. The Landlord said the Tenant also damaged a lower railing on his balcony by climbing over it to exit the rental unit. The Landlord also said that the Tenant has broken glass in common areas and refused to pick it up. On one occasion, the Landlord said another tenant asked him to clean up glass from a coffee mug that he dropped and broke however the Tenant simply threw it against a fence. The Tenant claimed that his screen door was damaged at the beginning of the tenancy and that he removed it to fix it but that he now does not know where it is. The Tenant said he fixed the railing. The Tenant claimed that he only broke some glass when moving some articles and that he picked it up.

The Landlord also claimed that the Tenant threw a ripped up couch into the dumpster on the rental property with the result that no one else could use the dumpster until he made special arrangements to the dumpster emptied. The Landlord said there is signage by the dumpster advising tenants not to dispose of large items and furniture. The Landlord further claimed that the Tenant had stored a friend's furniture in his suite with his permission but later moved them into a common area against a fence such that it blocked the parking stalls of other tenants who could not get out. The Landlord said he asked the Tenant to remove the furniture but he did not do so and the Landlord had to remove and dispose of them himself. The Tenant denied disposing of a couch in the

dumpster. The Tenant admitted that he left furniture in a common area but denied that it blocked any parking stalls and claimed that he helped the Landlord to dispose of it later the same day.

The Landlord said he told the Tenant to store his bicycle on his balcony but instead he parked it in a flower planter and also permitted his guests to store their bicycles in the planter. The Landlord said this blocks access to shopping carts left on the property for the use of seniors who reside in the rental property. In summary, the Landlord said he is constantly talking to the Tenant about his breach of the rules that he agreed to when he signed his tenancy agreement but the Tenant continues to violate them. The Tenant said he does not think he has done anything wrong and does not understand why the Landlords are trying to end his tenancy.

### Analysis

In this matter, the Landlords have the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the Landlords' evidence is contradicted by the Tenant, the Landlords will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I find that there is no evidence that the Tenant has engaged in illegal activity and therefore I find that the Landlords cannot rely on those grounds for ending the tenancy. I also find that there is no evidence that the Tenant was given written notice to make repairs or to correct a breach of a material term of a tenancy agreement and therefore I find that the Landlord cannot rely on those grounds for ending the tenancy. I further find that there is insufficient evidence that there is or have been other people occupying the rental unit as their residence as opposed to being there as a guest for a short period of time. Consequently, I find that the Landlord cannot rely on this ground of the Notice to end the tenancy. Although the Landlord argued that the Tenant admitted that a friend was going to move in and that he did not have the Landlord's consent to have a roommate, I find that this is not subletting (which is not permitted under the Act) and the Landlord provided no evidence (ie. tenancy agreement) to show that only the Tenant was permitted to occupy the rental unit.

I also find that there is no evidence that the Tenant has put the Landlord's property at significant risk or seriously jeopardized the health or safety of another occupant or the landlord. Although the Landlord claimed that the Tenant was leaving a fire door and gate to the property open, this was denied by the Tenant and the Landlord provided no corroborating evidence to resolve this contradiction.

In essence, I find that the Tenant has probably been disturbing the Landlord, T.C., with his conduct; ie. noise complaints by other tenants, obstructing parking stalls of other tenants with furniture, leaving furniture in a dumpster contrary to instructions not to do

so, leaving broken glass in common areas. Where the evidence of the Parties differed on these points, I preferred the evidence of the Landlord because I did not find the Tenant's evidence credible. I also find that the Landlord has brought his concerns about the Tenant's conduct to his attention, however the Tenant appears to lack insight into how his actions and the actions of his guests disturb or interfere with the use and enjoyment of the property by other tenants.

However, while I find that the Tenant has disturbed the Landlord and other occupants, I am not convinced that his misconduct is significant enough **at this time** to end the tenancy. Consequently, I grant the Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated July 26, 2012 **for this reason only**. This means the Tenant is now on Notice that if he or his guests continue to engage in misconduct that disturbs the Landlord or other occupants of the rental property, the Landlord may then have the necessary grounds to end his tenancy.

The Landlord is also put on notice that if he issues a further One Month Notice to the Tenant, he must do more than make allegations at the hearing that are denied by the Tenant in order to have the Notice upheld.

### Conclusion

The Tenant's application is granted. The One Month Notice to End Tenancy for Cause 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: August 28, 2012.

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Residential Tenancy Branch