



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a one month notice to end tenancy for cause issued on September 24 2012.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

### Issue(s) to be Decided

Should the notice to end tenancy issued on September 24, 2012, be cancelled?

### Background and Evidence

The parties entered into a one year fixed term tenancy which began on February 1, 2012. Rent in the amount of \$1,125.00 was payable on the first of each month. A security deposit of \$562.50 was paid by the tenant. Filed into evidence is a copy of the tenancy agreement.

The parties agree that a one month notice to end tenancy for cause was served on the tenant indicating that the tenant is required to vacate the rental unit on October 31, 2012.

The reason stated in the notice to end tenancy was that the tenant has:

- Allowed an unreasonable number of occupant in the unit; and
- Breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord's agent testified that the tenant has breached a material term of the tenancy agreement by having three additional people residing in the one bedroom rental unit. The landlord's agent states under the terms of the agreement the tenant is to be the only person residing in the unit.

The landlord's agent testified that clause #9 of the tenancy agreement does allow the tenant to have guest, however, these additional people have been residing in the unit for five month and are not planning to leave for at least a further five months.

The landlord's agent testified on August 9, 2012, the tenant was served with a breach of contract letter. Filed in evidence is a copy of the letter.

The landlord's agent testified on August 22, 2012, the tenant was served with a thirty days notice to comply with the terms of the tenancy agreement and failure will result in a notice to end tenancy. The landlord's agent stated the tenant failed to comply with the letter and on September 24, 2012, was served with a one month notice to end tenancy. Filed into evidence is a copy of the thirty day notice dated August 22, 2012. Filed in evidence is a copy of the one month notice to end tenancy issued on September 24, 2012.

The tenant testified when she signed the tenancy agreement she was unaware her family would be coming to stay. The tenant stated she later had a verbal agreement with the landlord that her parents and brother would be allowed to stay with her, however, at the time she did not know how long they would be staying.

The tenant acknowledged that her parents and brother have been residing with her for five months and that they will continue to reside with her for at least a further five months.

The tenant acknowledged she received the letter dated August 9, 2012 and August 22, 2012.

### Analysis

Based on the above, the testimony and evidence, an on a balance of probabilities, I find as follows:

After considering all of the oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- Allowed an unreasonable number of occupant in the unit; and

- Breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenancy agreement signed by the tenant, indicates the tenant as the sole person to be residing in the rental unit. Clause #9 of that agreement defines the terms of occupants and guests. This clause is initialed by the tenant.

The tenant has acknowledged that she has for the past five months had three additional people residing in the one bedroom rental unit. The evidence of the tenant was that these people will continue to reside with her for at least a further five months. As a result, I find the tenant has breached a material term of the tenancy agreement.

The tenant acknowledged she received the written warning letters provided by the landlord dated August 9, 2012, and August 22, 2012. The letter notified the tenant that if she continued to have these additional people reside in the unit, contrary to the tenancy agreement that they would be seeking a notice to end tenancy. I find the tenant was provided sufficient warnings by the landlord to correct the material breach of the tenancy agreement and failed to comply.

Therefore, I find the one month notice to end tenancy for cause, issued on September 24, 2012, is a valid notice. As a result, I dismiss the tenant's application to cancel the notice. The tenancy will end on October 31, 2012, in accordance with the Act.

As the tenant's application is dismissed and the landlord has made an application for an order of possession, pursuant to section 55 of the Act, I must grant this request.

Section 55(1) of the Act states: Order of possession for the landlord

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,  
(a) the landlord makes an oral request for an order of possession, and  
(b) the director dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **October 31, 2012, at 1:00 P.M.**

This order must be served on the tenant and may be filed in the Supreme Court.

Conclusion

The tenant's application to cancel a one month notice to end tenancy for cause issued on September 24, 2012, is dismissed.

The landlord is granted an order of possession.

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: October 10, 2012.

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Residential Tenancy Branch