



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNL

### **Introduction**

This Hearing dealt with the Tenant's application cancel a *Notice to End Tenancy for Landlord's Use* (the Notice) issued October 1, 2012.

The parties gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

It was determined that the Landlord was served with the Notice of Hearing documents by registered mail sent October 16, 2012. It was also determined that the Landlord served the Tenant with her documentary evidence on November 3, 2012.

### **Preliminary Matters**

1. The Landlord provided a VHS recording in evidence, which I was not able to access because the Landlord did not provide the necessary equipment to play the VHS recording. Rule 11.8 of the Residential Tenancy Branch Rules of Procedure provides that the party submitting the digital evidence must determine that the other party and the Residential Tenancy Branch have playback equipment or are otherwise able to gain access to the evidence. In addition, regardless of how evidence is accessed during a Hearing, the party providing digital evidence must provide the Residential Tenancy Branch with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files.

Therefore, the VHS recording was not admitted into evidence.

2. An old 4 page form of a notice to end the tenancy was issued and served upon the Tenant. However, I determined that the form of the notice is not invalid because it contains the required information and was not constructed with the intent of misleading the Tenant. The Landlord's agent was cautioned to use the most current form when issuing subsequent notices to end tenancy upon tenants.

### **Issue to be Decided**

Should the Notice issued October 1, 2012, be cancelled?

### **Background and Evidence**

The Landlord posted the Notice on the Tenant's door on October 1, 2012. Section 90 of the Act deems service in this manner to be effective October 4, 2012, which is 3 days after posting the Notice. However the Tenant acknowledged receiving the Notice on October 3, 2012. The Tenant filed her application to cancel the Notice on October 12, 2012, which is within the time allowed under Section 47 of the Act.

The Notice indicates the following reasons for ending the tenancy:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant of the landlord of the residential property, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk; and
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property; has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The Landlord's agent DJ testified that the Tenant is loudly arguing with her boyfriend, sometimes late at night or in the early hours of the morning, which is disturbing other occupants in the building. The Landlord's agent stated that he has given the Tenant 5 verbal warnings and two written warnings with respect to this behavior. He was not able to give certain dates when the warnings were given and did not provide copies of the written warnings in evidence.

The Tenant acknowledged that she received two written warnings. She stated that the first one was provided on August 8, 2012, and was for having furniture on her balcony which she subsequently removed. She stated she received another written warning on October 24, 2012.

The Landlord's agent provided written statements from other occupants in the building, which were written after the Notice was served and therefore not provided to the Tenant prior to the Notice being issued.

The Landlord's agent alleged that the Tenant's boyfriend was involved in a drug deal on the street in front of the rental property on or about September 6, 2012, based on other occupants witnessing money changing hands through a car window. The Tenant denied that her boyfriend was doing a drug deal.

The Landlord's agent stated that there was another loud argument between the Tenant and her boyfriend on October 24, 2012. The Tenant admitted to this disturbance and stated that she apologized to the Landlord and promised that it would not happen again.

### **Analysis**

Based on the evidence of both parties, I find that the Notice is not a valid notice to end the tenancy, for the following reasons:

1. The Landlord's agent could not provide sufficient details with respect to specifics regarding disturbances. The Landlord's oral testimony and documentary evidence is vague and the Landlord's agent could not provide specific dates with respect to when the Landlord verbally warned the Tenant. I recommended to the Landlord's agent that he provide written warnings to occupants in the future.
2. The disturbance that occurred on October 24, 2012, was after the Notice was issued.
3. There is insufficient evidence that the Tenant or her boyfriend has engaged in illegal activity on the rental property.

Therefore I find that the Notice is not valid. The Tenant's application is granted. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant is cautioned that the Landlord has a responsibility to other occupants in the rental property to provide them with quiet enjoyment and that any future disturbances could give rise to the Landlord issuing another Notice to End Tenancy for Cause.

### **Conclusion**

The Notice to End Tenancy issued October 1, 2012, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant is cautioned that the Landlord has a responsibility to other occupants in the rental property to provide them with quiet enjoyment and that any future disturbances could give rise to the Landlord issuing another 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: November 22, 2012.

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Residential Tenancy Branch