



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's application to cancel a Notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Procedural and Preliminary Matters

As a preliminary matter I confirmed that both parties had received the written submissions and evidence of the other party in a timely manner and had an opportunity to review the documentation. Accordingly, I informed the parties that I would accept same the documents served upon the Branch. The tenant's Advocate raised a concern over relevancy of landlord's submissions pertaining to events that allegedly took place after the issuance of the Notice to End Tenancy. I informed the parties that I would deal with relevancy at the appropriate time during the hearing.

Nevertheless, I noted that there was a fair amount of documentary evidence pertaining to late payment of rent and I informed that parties at the outset of the hearing that I found that evidence to be irrelevant as the Notice to end Tenancy does not identify "repeated late payment of rent" as a reason for ending the tenancy.

The tenant's Advocate submitted that the tenancy had been re-instated since the Notice had been issued. I heard from the Advocate on this point and reserved my decision. I have provided more detail and analysis on this point further below.

The tenant's Advocate also submitted that the landlord was violating the tenant's human rights. I responded by informing the parties that the tenant is at liberty to file a human rights complaint to the proper authority.

Issue(s) to be Decided

Has the tenancy been re-instated since the Notice to End Tenancy was issued? If not, has the landlord provided sufficient evidence to show the tenancy should end for the reason indicated on the Notice?

Background and Evidence

The landlord is a housing society that offers subsidized housing to seniors and persons with disabilities. The tenancy commenced December 1, 2009 and the tenant is required to pay rent on the 1<sup>st</sup> day of every month.

On August 22, 2012 the landlord issued a 1 Month Notice to End Tenancy for Cause (the Notice) with a stated effective date of September 30, 2012. The Notice indicates the reason for ending the tenancy is that the *tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed other occupants or the landlord.*

The landlord sent it to the tenant via registered mail on August 24, 2012. In the days that followed the landlord and tenant were speaking and the tenant indicated he had not received the registered mail. On September 6, 2012 the landlord slid another copy of the Notice under the tenant's door, which he confirmed he received the same day.

I asked the tenant whether he ever received the Notice via registered mail to which he replied he had not. The landlord provided evidence of the registered mail tracking number and stated that the tenant had picked it up. A search of the tracking number indicated the registered mail was transferred to various postal facilities before it was available for pick up on September 4, 2012 and picked up by the tenant on September 7, 2012. The tenant then changed his testimony to confirm he did pick it up by after he received the Notice slid under his door. I cautioned the tenant to carefully consider questions asked of him and to provide the most accurate response the first time as failure to do so would affect his credibility.

Upon review of the registered mail tracking information I was satisfied that due to no fault of either party the registered mail was unavailable for pick up until September 4, 2012 and the tenant could not have received it sooner than that. Accordingly, I found that the tenant received the Notice on September 6, 2012 when he received it under his door and that he failed to dispute the Notice within the time limit provided by the Act. As

the tenant received the Notice September 6, 2012 the effective date automatically changed to read October 31, 2012 pursuant to section 53 of the Act.

The Advocate submitted that the tenant had paid rent for October and November after the stated effective date of the Notice without any indication from the landlord that the payment would not reinstate the tenancy. The Advocate quoted a paragraph from Fact Sheet 124: *Reinstatement of Tenancies* as a basis for this position.

The landlord acknowledged that rent had been paid by cheque at the landlord's office, for which a receipt was not issued; however, the landlord did not acknowledge that the tenancy had been reinstated.

I noted that the Notice to End Tenancy was under dispute, the hearing had not been cancelled and the parties were exchanging evidence for this proceeding in support of their respective positions. I advised the parties I would consider the issue of re-instatement and that I would proceed to hear the reasons for issuing the Notice to End Tenancy.

The landlord submitted that the tenant has been disruptive to others throughout much of his tenancy. The tenant had been warned of noise disturbances related to running fans in his unit in 2010. Then in 2011 the tenant was warned to stop disturbing people by asking for money. Finally, on February 20, 2012 the landlord delivered a warning letter, which states:

[The landlord] has had numerous complaints from other tenants regarding you knocking on their doors at late night hours asking for money or cigarettes. This is a breach of the tenancy agreement you signed when you moved in on December 1, 2009. Section 23 Conduct "The tenant agrees that if any occupant or guest causes unreasonable and/or excessive noise or disturbances the landlord may end the tenancy". Knocking on other tenant's door at late night hours is considered by [the landlord] to be an unreasonable disturbance.

This is the second letter that [the landlord] has had to send to you regarding disturbances you cause at night time to your neighbours. Any further complaints will result in an immediate eviction notice being issued."

[Reproduced as written, except for name of landlord]

On May 9, 2012 another tenant wrote a complaint letter to the landlord regarding the tenant's conduct at 1:00 a.m. In the complaint letter the complainant describes how the

tenant had come to the complainant's door at 1:00 a.m. to ask to borrow \$40.00. When the complainant refused the tenant offered to give the complainant a cheque for \$40.00. The complainant also expressed opinions that the tenant's personality is consistent with someone suffering addition or substance abuse problems and likened the tenant to predator as other tenants are often afraid to say no to the tenant.

In July 2012 another tenant came to the landlord to inform the landlord that a cheque the tenant had written to her for money she had loaned him had been returned for insufficient funds.

The landlord confirmed that most of the occupants in the building are very vulnerable and of little financial means. The landlord also submitted that many others have made verbal complaints to the landlord about the tenant's disturbing behaviour but that those tenants would not submit a written complaint. However, the landlord pointed to a photograph of another tenant's door where a note is attached to it to discourage knocking on the door. It reads: NO CIGARETTES, NO TOBACCO, NO MONEY.

The tenant did not deny receiving the warning letter of February 20, 2012 although the tenant's Advocate indicated the tenant was very focused on other legal matters at the time. The tenant did not deny knocking on the door and asking to borrow \$40.00 on May 9, 2012. However, the tenant submitted that the woman who received the NSF cheque was a good friend of his and that they had resolved their differences in June 2012. I pointed out to the tenant that the cheque was returned in July 2012.

Nevertheless, there was acknowledgement that the tenant has been affected by fluctuating income levels and has had trouble managing his money. There was acknowledgement that the other tenants' right to quiet enjoyment must be protected by the landlord and that asking other tenants for money and/or cigarettes, especially in the late night hours, is inappropriate behaviour. However, the Advocate submitted that the landlord has an obligation to accommodate the tenant's disabilities which include cognitive impairment.

The Advocate submitted that the tenant now appreciates the gravity of the situation and has made efforts to curb such disturbing behaviour in the future, such as gaining the support of his church and attending sessions with a psychiatrist. The tenant requested the landlord consider giving the tenant another chance and continue with the tenancy.

The landlord clarified that it does not employ staff capable of dealing with the tenant's disabilities. The landlord indicated that it was not interested in continuing with the

tenancy as the landlord's staff had little confidence that the tenant's behaviour would significantly change.

Both parties spoke to an allegation of threats and intimidation by the tenant toward another tenant after the Notice was issued; however, I did not consider these allegations relevant to the issue under dispute. Rather, I informed the parties that I would determine whether there was sufficient reason to issue the Notice to End Tenancy on August 22, 2012.

### Analysis

Upon careful consideration of everything presented to me I provide the following findings and reasons with respect to the tenant's application.

With respect to the Advocate's argument that that the tenancy was reinstated simply because rent was paid after the stated effective date of the Notice I reject that argument for the following reasons.

The Advocate pointed to a Fact Sheet as the basis for this position. Fact Sheets published by the Residential Tenancy Branch are intended to provide information to the public to encourage best practices. Where there is any discrepancy between a Fact Sheet and the Act, the Act takes precedent. I also note that at the time of writing this decision the Fact Sheet referred to by the Advocate has been removed or altered on the Branch website.

The Act does provide that common law shall apply to landlords and tenants, except where modified by the Act. The Branch publishes Residential Tenancy Policy Guidelines to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation. In particular Residential Tenancy Policy Guideline 11: *Amendment and Withdrawal of Notices* provides information where it may be found that a Notice to End Tenancy has been waived or withdrawn.

The Policy Guideline provides, in part:

*A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties.*

*The question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End has been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End, no question of "waiver" can arise as the landlord is entitled to that rent.*

*If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:*

- *whether the receipt shows the money was received for use and occupation only.*
- *whether the landlord specifically informed the tenant that the money would be for use and occupation only, and*
- *the conduct of the parties.*

*There are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights.*

In this case, the effective date of the Notice is October 31, 2012 since the Notice was received September 6, 2012. When the tenant paid rent for October 2012 the landlord was entitled to that rent and no question of waiver can be raised.

However, the tenant also paid rent for November 2012 at the end of October 2012 and the payment was for a period after the effective date of the Notice. I was not presented any evidence the landlord expressly waived the Notice. With respect to implied waiver, I find the rent payment itself is not sufficient to show the landlord reinstated the tenancy when I consider the other conduct of the parties:

1. The landlord had served the tenant with evidence on October 26, 2012 indicating the landlord was pursuing the end of tenancy;
2. The hearing scheduled to deal with a disputed Notice to End Tenancy on November 1, 2012 was not cancelled.

In keeping with the Policy Guideline, developed using common law, I find there is insufficient basis to conclude the Notice to End tenancy was waived or withdrawn and the tenancy was reinstated. However, I make a finding under section 62 of the Act that

the payment for November 2012 shall entitle the tenant to use and occupancy of the rental unit for the month of November 2012 pending the outcome of this decision.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason indicated on the Notice.

It is undisputed that the tenant has on a number of occasions knocked on other occupants' doors, and at late night hours, looking for money and/or cigarettes. I find a reasonable person would consider such behaviour unreasonably disturbing.

I also find that as of February 20, 2012 the tenant was clearly warned to cease such behaviour and that continued behaviour would result in eviction.

It is undisputed that such behaviour recurred after the warning letter was received by the tenant and prior to the issuance of the Notice to End Tenancy dated August 22, 2012.

In light of the above, I find the landlord has established there was sufficient reason for issuing the Notice to End Tenancy on August 22, 2012. Therefore, I deny the tenant's application and I uphold the Notice to End Tenancy.

As I have found that the tenant has paid for use and occupancy for November 2012, I order that the tenant must vacate the rental unit by 1:00 p.m. on November 30, 2012.

The landlord is at liberty to file an Application for Dispute Resolution to seek an Order of Possession as necessary.

### Conclusion

The tenant's application has been dismissed. The tenant has been ordered to vacate the rental unit by 1:00 p.m. on November 30, 2012.

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 09, 2012.

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Residential Tenancy Branch