



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

**Dispute Codes:** CNC.

### Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated October 30, 2012.

The One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, put the landlord's property at significant risk and that the 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 and 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.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. Participants had an opportunity to submit documentary evidence prior to this hearing, which has been reviewed. The parties were also permitted to present oral testimony and make submissions during the hearing. I have considered all of the evidence provided.

Each party confirmed receipt of the other party's evidence. Neither party raised any issues regarding service of the application or evidence. I have reviewed all testimony and other evidence. However, only evidence relevant to the issues and findings in this matter are referenced in this decision.

### Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

The burden of proof is on the landlord to justify the Notice.

### Background and Evidence

The tenancy began in August 2011 and the rent has been increased to \$1,080.00.

A copy of the One-Month Notice to End Tenancy for Cause dated October 30, 2012, was in evidence showing an effective date of November 30, 2012.

Section 47(1) permits the landlord to end a tenancy for one or more of the causes listed in this section. Section 47(2) of the Act states that a notice for cause must end the tenancy effective on a date that is: (a) not earlier than one month after the date the notice is received, and (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Under section 90(c) of the Act a Notice posted on the door is deemed as served in 3 days. A One-Month Notice to End Tenancy for Cause posted on October 30, 2012 and deemed served on November 2, 2012, could not be effective under section 47(a) and (b) of the Act until December 31, 2012. Therefore, with respect to the effective date of November 30, 2012, shown on this Notice, I find that it does not comply with the Act.

Section 53 (1) of the Act states that, if the effective date of a notice to end a tenancy does not comply, the notice is deemed to be changed in accordance the Act. Accordingly, the effective date of this Notice is changed to December 31, 2012.

The landlord testified that the Notice was issued after an incident on October 15, 2012 and also because of complaints about the tenant's conduct and that of her guests.

The landlord testified that they had received some complaints about the tenant with respect to allegations that the tenant and her associates were engaged in selling drugs and this activity had the effect of disturbing others in the complex. The landlord also testified that the tenant had been making excessive noise and had been repeatedly warned about smoking in the common areas both verbally and in writing.

The landlord submitted into evidence a copy of complaints from residents about the tenant in regard to noise, yelling, late night activities and selling drugs. The landlord submitted into evidence copies of warning letters to the tenant about the smoking issue.

According to the landlord, they had attempted to speak with the tenant about this disruptive conduct and other issues of concern on several occasions, but the tenant would not respond when they went to the unit and the landlord also found it difficult to communicate because of a language barrier.

The landlord testified that on October 15, 2012, she was in a common area when the tenant happened to pass by. The landlord took that opportunity to try to converse with the tenant about the complaints. The landlord testified that the tenant became extremely belligerent, loudly cursing at the manager. The tenant called out to her boyfriend to get involved and things escalated from there. According to the property manager, the

tenant's boyfriend became aggressive and her husband was physically assaulted. The landlord stated that the police arrived and an incident report was on file.

The tenant disputed the landlord's version of the encounter and took the position the property manager accosted her and became aggressive. The tenant pointed out that it was the tenant who called police and that no charges were laid against the tenant or any of her associates. The tenant pointed out that they had been living in the complex since August 2011 without incident and it was only after new management arrived that they have been unfairly accused of causing problems.

The landlord testified that the tenant caused excessive noise and disturbances over a period of time and this generated complaints from several residents. The landlord submitted copies of the letters of complaint. The objectionable conduct being complained included late-night visitor activity, people throwing rocks at the window of the tenant, the building keys being tossed down by the tenant to people from the tenant's balcony so they can enter the complex, boisterous behavior, frequent short-term visitors coming and going at all hours, threatening, hostile demeanor towards the landlord and other renters, associates of the tenant banging on the door and yelling without regard for others and open use and selling of narcotics on the premises.

In addition to the above concerns, the landlord testified that the police have been monitoring the rental complex and conducting surveillance of the tenant's activities and those of their visitors. The landlord testified that this has a disturbing effect on the other residents and is damaging the reputation of the complex as a secure place to live.

The tenant testified that she was never given warnings about any allegations of excessive noise. The tenant believes that the landlord merely solicited the letters of complaint submitted into evidence.

In regard to the allegation that the tenant had been warned in writing about smoking in the common areas, the tenant denied ever receiving these letters, dating back to June 2012, which had been submitted into evidence by the landlord.

Some of the complaints that were in evidence pertained to a period *after* the One Month Notice for Cause had already been issued on October 30, 2012 and portions of the landlord's testimony also related to events that happened after these Notice was issued. This evidence was found not to be relevant to the issue before me.

### **Analysis**

Section 28 of the Act protects a tenant's right to quiet enjoyment and this right applies to all residents in the complex. I find that the landlord did provide sufficient proof that others are apparently being disturbed by the tenant. I also accept that there was a

disturbing incident involving physical violence on October 15, 2012 that required police attendance.

With respect to the disruptive conduct of the tenant and her guests, as described by the landlord and others, if this was proven to have genuinely occurred, I find that it would support terminating the tenancy for cause.

However, I find that the documentary evidence from the landlord only proved that complaints were made, but does not serve to verify the validity of these complaints. The complainants were not present as witnesses and thus could not be cross-examined by the other party.

I find that the evidence about the October 15, 2012 incident is comprised of conflicting verbal testimony with each party pointing the blame on the other.

I further find that the warning letters about smoking in the common areas, even if the tenant admitted to receiving them, would not on their own, support terminating this tenancy for cause.

In light of the above, I find that there was not enough evidence presented by the landlord to prove that the tenant's conduct warrants ending the tenancy for cause.

That being said, I caution the tenant, which extends to the tenant's friends and associates, not to act in a hostile manner towards the landlord or any other residents.

I find that the tenant agrees that she is aware this kind of behaviour is contrary to the Act and cannot be tolerated. In addition, I find that the tenant is also aware that she has a responsibility to ensure that there are no boisterous guests frequently coming into and leaving the suite, particularly after hours and that throwing keys from the balcony to give visitors access is not permitted either. The tenant was also informed that excessive noise such as loud arguments, foul language, open drug use or transactions and other unruly activities perpetrated by the tenant, or the tenant's guests, will bring about the end of this tenancy relationship.

The tenant is cautioned that this decision serves as a warning and, if any significant interference or disturbance is inflicted on the landlord or residents in the complex going forward, it will place the tenancy in serious jeopardy.

In cancelling this Notice, I order that:

- the tenant and the landlord both restrict all communications with each other to written form and avoid verbal conversations unless absolutely necessary.

In addition, I order that the tenant and her associates must also refrain from the following conduct:

- Having loud arguments that can be heard by others from outside the suite.
- Verbally abusing, or using foul language towards, the landlord or any other person in the complex.
- Allowing boisterous or unruly visitors, particularly after hours.
- Permitting access to others by giving them keys to the doors.
- Openly using or selling drugs on the grounds or within sight of the other residents living in the complex.
- Smoking in common areas where it is prohibited.

Based on the evidence and with the provisions contained above, I hereby order that the One-Month Notice to End Tenancy of October 30, 2012 be cancelled and of no force nor effect.

Should the tenant not comply with the above orders, the landlord is always at liberty to issue another One Month Notice to End Tenancy for Cause.

### **Conclusion**

The tenant is successful in the application and the One Month Notice to End Tenancy for Cause was cancelled.

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: December 06, 2012.

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Residential Tenancy Branch