



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call in response to the tenants' application to cancel a Notice to End Tenancy for cause.

The tenants, the landlord and an advocate for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

Are the tenants entitled to have the One Month Notice to End Tenancy Cancelled?

### Background and Evidence

The parties agree that this tenancy started on June 01, 2013 although the tenants were able to move belongings in a little sooner. Rent for this unit is \$400.00 per month and is due on the first day of each month. The landlord testifies that the unit was rented to the male tenant only with his two children staying for two weeks of each month. the tenants dispute this and state they have been a couple for over a year and a half and rented the unit together as they both have joint custody of the male tenants children. The tenants testify that this was a verbal agreement as the tenants needed a short term rental as

they are moving to the East of Canada in September and the landlord did not provide a tenancy agreement. The tenant testifies the landlord knew the female tenant was also living in the unit as the female tenant was the only tenant working at that time and was responsible for the rent. The landlord also provided a parking space for the female tenant's truck.

The landlord's advocate testifies that if this had been a rental for two adults the landlord would have charged more rent. The landlord's advocate testifies instead the landlord thought it was just for the male tenant and reduced the rent as the tenant also agreed to do some work for the landlord. The landlord testifies that the female tenant was given a place to park when she came to visit.

The landlord testifies that the tenants have been served with three separate One Month Notices on June 15, June 29 and July 10, 2013. One Notice was in the male tenant's name, one in the female tenant's name and one in both tenant's names. The tenants were also served with a 10 Day Notice for unpaid rent on July 18, 2013.

The tenants agree the landlord has served four notices but testify that only the One Month Notice served on June 15, 2013 was a complete Notice containing the second page. This has been provided in evidence. The Other Notices provided in evidence only have the first page.

The landlord's advocate testifies that the tenant was served a One Month Notice to End Tenancy for cause by posting the Notice to the tenant's door on June 15, 2013. This notice has an effective date of July 07, 2013 and gives the following reason to end the tenancy:

*1)The tenant or a person permitted on the residential property by the tenant has*

*(i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*

*(ii) Put the landlord's property at significant risk;*

The landlord's advocate testifies that in the middle of June the tenant and his girlfriend had a loud fight in the unit and the tenant or his girlfriend were slamming doors. The landlord was fearful for her safety and the safety of her property so the landlord called the police who attended the unit. The landlord has provided an incident report number. The landlord's advocate testifies that this was the first time the landlord found out that the tenant's girlfriend was living in the unit.

The landlord's advocate testifies that the tenants continued to disturb the landlord by slamming doors and at one time the male tenant threatened the landlord. The landlord has now moved from her unit above the tenants to stay at her daughters as the landlord is scared of the tenant and his girlfriend. The landlord only returns home to change her clothes and feed her cats.

The landlords advocate testifies that the tenants have put the landlord's property at significant risk as they are partying and using drugs and alcohol. The landlord testifies that she has not seen the tenants using drugs but can smell it in her unit. The landlord testifies the tenants have parties all the time except when they have the children staying in the unit.

The tenants dispute the landlord's claims. The tenant RR testifies that as of July 01, 2013 both tenants have been working six days a week and do not argue party, drink or do drugs. The tenant testifies that they had to call the police as the landlord had entered their unit without proper notice. The tenant testifies that they have never threatened the landlord but rather the landlord has threatened the tenants with her son.

The tenant testifies that when the landlord entered their unit the landlord or someone working for the landlord did something to the tenants' door because now the door cannot be closed gently and has to be slammed shut.

The tenant AB testifies that this is an older house and has no sound proofing between the landlords unit and the tenants unit. The tenant testifies that they can hear the landlord all the time in her unit and any normal living noise travels between the units.

The tenant RR testifies that the landlord wants to evict the tenants by whatever means. The landlord has served numerous invalid notices, has told the tenants that her family are coming to live in the unit and has also said that a realtor wants to look at the unit and tenants would not help to sell the house.

The tenants dispute that they have done anything to put the landlord's property at significant risk. The tenants AB testifies that he had agreed to take care of cutting the grass for the landlord however has been unable to do that recently because the landlord has removed the lawn mower.

The tenants decline to cross examine the landlord.

The landlords advocate asks the tenants why the tenants have fought being evicted. The tenant RR responds that they have to fight it because the landlord is lying about the agreement and what the tenants are allegedly doing.

### Analysis

In this matter, the landlord has 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 landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I have reviewed the documentation before me. I have also taken into consideration the testimony I have heard today from the parties involved. I find that despite the landlords concerns, no written warnings have been given to the tenants about noise or

disturbances. In order for me to uphold the Notice I must be satisfied that the tenants' behaviour is significant in its nature that it has caused serious disturbances to the landlord, or that the tenants behaviour has put the landlords property at significant risk. When it is a matter of one person's word against that of the other then the burden of proof has not been met. Therefore, in the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

I am not prepared to make a finding as to the landlord's claim that the unit was only rented to the male tenant as this does not form the basis for an eviction as it is not included on the valid One Month Notice. I will however mention that where there is no written tenancy agreement in place it again becomes one person's word against that of the other and without the corroboration of a written tenancy agreement I would have no basis for favoring one version over the other.

With regard to the other One Month Notices produced in evidence and the 10 Day Notice; in order for a document to be legal and valid it must be complete. The tenants have testified that they only received the first pages of these Notices and I have only been provided with the first pages of these Notices in evidence. I therefore find the other two One Month Notices provided in evidence along with the 10 Day Notice are deemed to be invalid documents.

I caution the tenants and the landlord to avoid being confrontational and to respect the other person's right to live peacefully in their unit.

### Conclusion

The tenants' application is allowed. The one Month Notice to End Tenancy for Cause dated, June 15, 2013 is cancelled and the tenancy will continue.

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: July 24, 2013

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Residential Tenancy Branch

