



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Karyn Holdings Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the tenant - MT, CNC, OLC, RP, LRE, AAT

For the landlord – OPB, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant has applied for more time to cancel a Notice to End Tenancy, to cancel the One Month Notice to End Tenancy; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, Regulations or tenancy agreement; for an Order for the landlord to make repairs to the unit; to suspend or set conditions on the landlords right to enter the rental unit; and to allow access to (or from) the unit for the tenant or the tenants guests. The landlord has applied for an Order of Possession because the tenant has breached an agreement with the landlord and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing it was determined that the landlord had made an error on the application and should have filed for an Order of Possession for cause. The tenant did not raise any objections to the landlord's application being amended to reflect this and the landlords application is now for an Order of Possession for cause and not because the tenant breached an agreement with the landlord.

I have also determined that the tenant filed her application on June 10, 2013. As the tenant had 10 days in which to file an application to cancel the One Month Notice and the tenant did so on the 10<sup>th</sup> day the tenant does not require more time to file an application.

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

### Preliminary Issues

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that not all the claims on the tenant’s application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenant’s application to cancel the One Month Notice to End Tenancy for cause and the remainder of the tenant’s application is dismissed with leave to reapply.

### Issue(s) to be Decided

- Is the tenant entitled to have the One Month Notice to End Tenancy set aside?
- Is the landlord entitled to an Order of Possession for cause?

### Background and Evidence

The parties agree that this month to month tenancy started on June 25, 2011. Rent for this unit is \$560.00 per month and is due on the first day of each month. The tenant paid a security deposit of \$280.00 on June 24, 2011 and a pet deposit of \$280.00 on July 19, 2011.

The landlord testifies that the tenant was served a One Month Notice to End Tenancy on May 31, 2013 in person. This Notice has been included in evidence and provides the following reasons to end the tenancy:

- 1) The tenant has allowed an unreasonable number of occupants in the unit
- 2) 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,
- 3) The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.
- 4) The tenant has assigned or sublet the rental unit without the landlords' written consent

The landlord's agent testifies that the tenant has allowed her son, daughter and grandchild to reside in the unit without written consent of the landlord. The landlord testifies that they believe the tenant's daughter stayed in the unit for two weeks along with the tenant's grandchild; and the tenant's son was in the tenants unit for about six weeks. The landlord's agent testifies that at one time there were three adults and a child living in a one bedroom suite. The tenant had another bed in the living room of the unit. The landlord testifies that the tenant was given written notice about her children staying on May 07 and May 09, 2013. The tenant was also given written Notice of noise from the tenants unit when the tenant was babysitting her grandchildren. The landlord testifies that this is an adult only building and was advertised as such. The tenant was welcome to have her children and grandchildren visit but they must not stay overnight.

The landlord's agent testifies that the tenant living below the tenant complained about the noise from the tenants grandchildren and eventually moved from the rental unit due to the noise. The landlords' agent directs me to the tenancy agreement which states that for additional person or persons residing at the premises, there will be an additional

\$50.00 added to the monthly agreed rent, upon first obtaining written consent from the landlord.

The landlords agent testifies that the landlord s agents requested the tenant to provide the addresses for her children to determine that they had their own addresses and were not living with the tenant the landlord's agent testifies that the tenant provided a document for her daughter which had an address on it but the reminder of the document was written in Danish so the landlords agent could not understand what was written. The landlord's agent testifies that they asked the tenant to provide a name and phone number for her daughter's landlord however this was not forthcoming.

The landlord requests an Order of Possession effective for July 31, 2013.

The tenant testifies that after the landlord served the Notice to the tenant the landlords agents agreed to tear up the Notice if the tenant provided the landlords agents with addresses for the tenant's children to show that they did not live in the tenants unit. The tenant testifies that they provided this information to the landlord's agents but then the landlords agents wanted to call her daughters landlord. The tenant testifies that her daughter's landlord did not want to get involved and asked not to have his name or number given out. The tenant testifies that the landlord's agents also said if the tenant's son left the unit they would tear up the Notice.

The tenant testifies that her children or grandchild did not move into her unit. The tenant testifies that her daughter moved to the area and stayed with the tenant with the tenant's one grandchild for two weeks as a guest. The tenant testifies that during that time her mother became very ill and the tenant had to leave the Provence to visit her mother. The tenant testifies that her daughter stayed in the unit and had the tenant's keys to access the unit. The tenant testifies that her son who is at school in Denmark came to stay at the tenants unit as a guest and to house and cat sit for the tenant while the tenant was away. The tenant's son had a van with some belongings in which was

insured and parked in the buildings car park. The tenant testifies that her son was staying with her to help for about eight weeks from April 15 to June 13, 2013.

The tenant testifies that she received a letter from the landlord's agents who wanted the tenant to change things in her unit with regard to boxes and moving furniture. The tenant testifies that as she has a disability her son stayed a little longer to help the tenant comply with the landlord's wishes. The tenant testifies if there was noise that disturbed another tenant below it would have been the noise from moving this furniture at the landlord's request. The tenant testifies she only had one grandchild staying in the unit and that grandchild did not make excessive noise. The tenant testifies that her grandchild was only there for about a week as she also spent time at her fathers.

The tenant testifies that her queen sized bed has always been in the tenant's living room as the tenant has to lie down for the majority of the day due to her disabilities. The landlord did not like this and asked the tenant to move her bed. The tenant disputes that the advertisement for the building stated it was an adult only building. The tenant testifies that the building was described as adult orientated. The tenant disputes the reasons given on the One Month Notice to End Tenancy and seeks to have the Notice cancelled.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords application for an Order of Possession; 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. The tenant disputes the reasons given on the Notice.

I find the landlord has provided no evidence to support the reasons that the tenant has significantly disturbed another tenant, or that the tenant has breached a material term of the tenancy agreement or assigned or sublet the rental unit. Therefore these reasons would not be sufficient to constitute an Order of Possession for the landlord.

With regard to the reason that the tenant has allowed an unreasonable number of occupants in then unit; the tenant has testified that for part of the time her daughter had come to visit; the tenant had to go and stay at her mother's out of the Province. This left the tenants daughter, grandchild and son staying in the unit together for a maximum of one or two weeks until the tenant returned and the tenant's daughter and grandchild left the unit. The tenant agreed that her son reminded in the unit visiting the tenant and assisting the tenant in moving furniture and boxes to comply with a request of the landlord. I have reviewed the tenancy agreement in this matter and find there is no clause in the agreement that states a tenant may not have guests or visitors staying at the unit for any specified period of time or that this is an adult only building. A landlord should make mention that visitors may not stay for exceeded periods in the tenancy agreement to inform the tenant of her obligations under the agreement. The tenant complied with the landlord's requests to provide addresses for her children to show they did not reside in the building however the landlord then requested further information from the tenant.

I am not therefore satisfied that the landlords have met the burden of proof that the tenant has allowed an unreasonable number of occupants in the rental unit. 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 do however caution the tenant that in future if the tenant has guests or visitors staying for longer than two weeks that the tenant notifies the landlord's agents of her intent so the landlord is aware that the tenant has visitors or guests for an extended period and has not assigned or sublet the unit.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated, May 31, 2013 is cancelled and the tenancy will continue.

The tenant is at liberty to reapply for the reminder of her application on the sections not heard at the hearing today.

The landlord's application is dismissed in its entirety without leave to reapply.

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 23, 2013

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Residential Tenancy Branch