

# **Dispute Resolution Services**

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Eryx Properties Ltd. and [tenant name suppressed to protect privacy]

# **DECISION**

### **Dispute Codes**

CNC, FF

#### **Introduction**

This hearing dealt with an application by the tenant to cancel a One Month Notice to End Tenancy For Cause (the Notice), dated July 30, 2013 with an effective date of August 31, 2013.

Both parties attended the hearing and were given opportunity to present all relevant evidence and relevant testimony in respect to this claim and to make relevant prior submission of document evidence to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

At the outset the landlord requested an Order of Possession. It must be noted that in this type of application, the burden of proof rests with the landlord to provide evidence that the Notice was validly issued for sufficient reasons as stated in the Notice to End.

# Issue(s) to be Decided

Is the notice to end tenancy valid and issued for valid reasons? Should the Notice to End dated July 30, 2013 be set aside? Is the landlord entitled to an Order of Possession?

# **Background and Evidence**

This tenancy began November 01, 2010. A copy of the Tenancy agreement was submitted. A copy of the Notice to End was submitted. The notice to end was issued for the following reasons;

- -Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so
- -A tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord.

Page: 2

The tenant disputes the Notice to End.

The landlord testified that the tenant keeps a small dog, and that the tenant, through their lack of control of the small dog, caused the dog to "attack" another small dog belonging to another resident of the residential property. The landlord provided evidence the other dog was seen by a Veterinarian for a consultation reportedly related to an injury. The tenant disputes the landlord's account and the evidence the landlord provided from the owner of the other dog. The tenant claims the other dog "attacked" their dog and the two dogs tussled.

The landlord also testified that the tenant currently has their son staying with them for the past 2 months, as an unauthorized tenant - without the landlord's consent – contrary to the tenancy agreement. Therefore the landlord claims the tenant is in breach of what the landlord purports is a material term of the tenancy agreement. The landlord and tenant acknowledge the son has received an application to rent from the landlord but has, to date, returned the application but failed to return it sufficiently completed or signed for consideration by the landlord. The tenant disputes the landlord's claims the application was returned unsigned for the landlord's consideration. The landlord testified they have simply returned it to the son with a request to complete the application.

#### <u>Analysis</u>

In this type of application, the burden of proof rests with the landlord to provide evidence that the Notice was validly issued for stated and sufficient reasons.

I find that if the tenant's conduct somehow permitted an incident in which their dog came into contact with another dog, such a single incident, if proven, is insufficient to support that the tenant *significantly interfered with or unreasonably disturbed another occupant or the landlord*. Therefore, the landlord's Notice to End based on this reason is not sufficient to end the tenancy.

I find that in order to end a tenancy agreement for breach of a material term a landlord must establish that the tenant breached a material term and that the tenant did not rectify or correct the breach within a reasonable time after written notice to do so by the landlord.

A material term is a term that both parties agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. Simply because the parties have put in the tenancy agreement one or more terms does not make them *material terms*. In this case, the landlord has stressed the importance or materiality of the tenancy agreement term: prescribing that the tenant must submit an application to the landlord for consideration whether an additional occupant can reside in the unit. It may be that the landlord's term within the tenancy agreement is a material term; however, **Section 47** of the Act is clear that in this type of matter, valid cause to end the tenancy under this section of the Act requires for the tenant to not only fail to

Page: 3

comply with a material term, but additionally fail to correct such a non-compliance — within a reasonable time after written notice to do so. I find that the landlord has not provided evidence they gave the tenant written notice to correct a breach of a material term and therefore cannot rely on this provision of the Act to end the tenancy. As a result, I find that the landlord has not provided sufficient evidence that the Notice to End was issued for the reasons stated in the Notice to End, and as a further result I am unable to establish that the landlord issued the tenant a valid Notice to End. Therefore, I Order the Notice to End dated July 01, 2013 is cancelled, or set aside. If necessary, the landlord is at liberty to issue another new valid Notice to End for valid reasons.

The tenant has come perilously close to losing their tenancy and it is available to them to comply with all terms of their agreement.

The tenant is entitled to recover their filing fee of \$50.00.

#### Conclusion

The tenant's application is granted. The landlord's Notice to End is **set aside and is of no effect.** The tenancy continues.

I Order that the tenant may deduct \$50.00 from a future rent.

The Decision is final and binding on both parties.

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: August 26, 2013

Residential Tenancy Branch