



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

CNC, CNE, FF.

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Cause dated July 27, 2013 and effective August 31, 2013.

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

### **Issue(s) to be Decided**

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

### **Background and Evidence**

The tenancy began on March 1, 2013 as a fixed term tenancy expiring on March 1, 2013. The rent is \$1,500.00 and payable to the landlord who rents the property from the owners. A written tenancy agreement signed by both the tenant and the landlord on February 9, 2013 indicates that the tenant is required to pay a security deposit of \$750.00 by April 1, 2013. However this deposit was not paid.

The tenant testified that, after the tenancy agreement was signed, the landlord waived the payment of the security deposit on the basis that the rental unit was not cleaned prior to the tenant taking possession. The tenant stated that the landlord suddenly demanded the payment because he decided to terminate their tenancy in order to move back into the rental unit himself.

The landlord disputed that the payment of the deposit was ever waived and pointed out that he had previously filed for dispute resolution in the past seeking to terminate the

tenancy for the tenant's failure to pay the deposit, but was not successful and the application was dismissed due to a deficiency in completing the One Month Notice to End Tenancy for Cause. The landlord testified that he then issued another One Month Notice to End Tenancy for Cause, which is the subject of this dispute.

The tenant testified that the One Month Notice to End Tenancy for Cause that was issued to the tenant by the landlord is different than the copy submitted into evidence by the landlord for the purpose of this hearing. The tenant pointed out that the alleged causes are not the same and this would indicate that the landlord is attempting to deceive. The tenant included a copy of the One Month Notice to End Tenancy for Cause that had been served on them by the landlord. The tenant is seeking to have the One Month Notice to End Tenancy for Cause cancelled on the basis that the reasons given do not apply to the tenant.

The tenant testified that, during the tenancy, the landlord has considered it to be his right to utilize the property for occasional events that entail accessing portions of the tenant's residence. The tenant feels that this intrusion has interfered with their quiet enjoyment of their home. The tenant testified that they attempted to lock the landlord out, but when the landlord claimed he was sharing the premises with the tenants, they were compelled by police to remove the locks. The tenant testified that the landlord is not co-habiting with the tenants as confirmed by the tenancy agreement.

The tenant is requesting an order that the landlord comply with the Act and agreement and cease entering their home at will. The tenant acknowledged that a portion of the house is reserved for the landlord to use for storage, and the landlord is entitled to use the garage area and adjacent bedroom, which don't require the landlord to enter through the tenant's portion of the building. According to the tenant, these areas are considered to be for the landlord's use. However, approximately 3 times per month the landlord hosts parties in the adjacent building known as the "nightclub" that also involves patrons accessing portions of the tenant's home. The tenant feels that this is not appropriate and seeks an order to prohibit the landlord from continuing the practice.

The landlord argued that it is a mutually agreed-upon term of the tenancy agreement that the landlord is allowed to hold events on the property and the landlord and his guests or patrons are entitled to use portions of the tenant's home for this purpose. The landlord stated that, although he did enter into a tenancy agreement with these tenants, and the written agreement makes no mention of the landlord holding events, The landlord actually contributes a portion of funds to the rent required by the owners, since his rental rate exceeds the amount being collected from the tenant.

### **Analysis: Failure To Pay Security Deposit Within 30 Days**

With respect to the stated cause that the tenant had failed to pay the security deposit within 30 days, I find that it is an established fact that the tenancy began on March 1, 2013 and the tenant did not submit the security deposit funds. I find that this failure to pay is in violation of the Act and agreement.

In regard to the tenant's argument that there was a specific verbal term altering the written tenancy agreement and a subsequent agreement that the landlord would waive the payment of the security deposit, I find that the tenant has not succeeded in proving that such a term exists and I also find that a written tenancy term cannot be successfully altered by a verbal term if disputed by one party.

The tenant had argued that the landlord only raised the issue of the unpaid deposit because he decided to terminate their tenancy in order to move back into the rental unit. Section 20(a) of the Act, governing collection of security deposits, prohibits a landlord from requiring a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement.

Although the tenancy agreement clearly stated in writing that the tenant is required to pay the security deposit by April 1, 2013, 30 days after the start of the tenancy, I find that the landlord did not pursue the issue of nonpayment of the deposit until he made the previous Dispute Resolution application at the end of June 2013.

In any case, regardless of this controversy, I find that the tenant is obligated to pay the security deposit under the tenancy agreement and must do so forthwith.

### **Analysis: Notice to End Tenancy**

In regard to the landlord's One-Month Notice to End Tenancy for Cause served on the tenant, I find that there are inconsistencies between the copy of the Notice submitted into evidence by the landlord and the copy of the Notice submitted into evidence by the tenant.

The landlord's evidence included a copy of the One-Month Notice to End Tenancy for Cause that indicates that the basis for ending the tenancy is that:

- the tenant is repeatedly late paying rent, and
- the tenant has not paid the security deposit within 30 days as required by the tenancy agreement.

The tenant's evidence also included a copy of the One-Month Notice to End Tenancy for Cause but their copy indicates that the basis for ending the tenancy is that:

- the tenant's rental unit is part of an employment arrangement that has ended and the unit is needed for a new employee, and
- the tenant has not paid the security deposit within 30 days as required by the tenancy agreement.

Given the inconsistencies in the evidence relating to the One-Month Notice to End Tenancy for Cause, I find that the Notice must be cancelled.

### **Analysis: Tenancy Term Allowing Use and Access**

Although the landlord testified that the terms of the tenancy agreement permit the landlord to utilize the premises for the purpose of holding parties several times per month, I find that no term in the written tenancy agreement makes reference to sharing the property in any respect.

Because there is no documentation detailing this particular tenancy term, being that it is apparently based on verbal consent, I find that, pursuant to section 6 (c) of the Act, it is not an enforceable term because *"the term is not expressed in a manner that clearly communicates the rights and obligations under it"*.

While it appears that this has been a regular practice since the tenancy began, I find that such a term, even if clearly documented within the written agreement, would likely be considered as unconscionable under section 6(b) of the Act.

I find that section 5 of the Act states that landlords and tenants may not avoid or contract out of the Act or the regulations and any attempt to do so is of no effect. Section 6(3)(a) also states that a term of a tenancy agreement is not enforceable if the term is inconsistent with the Act or the regulations.

Given the above, I find that the landlord is not at liberty under the Act or agreement to utilize the tenant's portion of the property for the landlord's own purposes, even if both the landlord and tenant had willingly agreed to such a tenancy term, as it is not sanctioned by the Act.

Section 28 of the Act protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;

- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

That being said, I find that the landlord is still entitled to freely access the specific areas reserved only for the landlord, including the garage/nightclub and adjacent bedroom, that do not require the landlord to enter or pass through the tenant's portion of the rental property.

Based on the facts before me, I find that the One-Month Notice issued by the landlord dated July 27, 2013 is cancelled and of no force.

I hereby order that the tenant is required to pay the landlord the \$750.00 security deposit within 15 days of receiving this decision.

I further order that the landlord refrain from accessing the tenant's residence for the landlord's purposes. I further order that the landlord comply with section 29 of the Act by giving written notice before accessing the tenant's property for the purpose of inspection or maintenance.

I find that the tenant is entitled to be reimbursed the cost of this application and I order the tenant to deduct \$50.00 from the next rent payment owed to the landlord.

### **Conclusion**

The tenant is successful in the application and the One-Month Notice to End Tenancy for Cause dated July 27, 2013 is cancelled. The tenant is ordered to pay the security deposit to the landlord pursuant to the tenancy agreement .

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: September 17, 2013

