



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Gateway Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** CNC

### **Introduction**

This Hearing dealt with the Tenants' application filed August 12, 2013, to cancel a *One Month Notice to End Tenancy for Cause* issued July 31, 2013.

The parties gave affirmed testimony at the Hearing.

The Landlord's agent, PH acknowledged that the Landlord was served with the Notice of Hearing documents. The Tenants did not provide the Residential Tenancy Branch or the Landlord with documentary evidence.

The Landlord's documentary evidence was posted to the Tenant's door with a witness present on September 5, 2013.

The Tenant was served with the Notice to End Tenancy on July 31, 2013.

### **Preliminary Matter**

This Hearing commenced at 3:00 p.m. I made an initial determination that the Tenants had not filed their application to cancel the Notice within the legislated time frame, which is within 10 days after the date the Tenants received the Notice. However, immediately upon ending the conference call at 3:20 p.m., I discovered that I had made a miscalculation. The deadline fell on a weekend. In these cases, the deadline is extended to the next business day. The Tenants filed their application on the next business day after the weekend and therefore the Tenants filed their application within the time allowed.

A representative of the Residential Tenancy Branch called both parties and we reconvened the Hearing at 3:30 p.m.

## **Issue to be Decided**

- Should the Notice be cancelled?

## **Background and Evidence**

The Landlord provided the following testimony and documentary evidence:

The Landlord provided documentary evidence including copies of two Notices of Violation dated December 12, 2012 and April 12, 2013; and three “witnessed occurrences” dated December 6, 2012, April 25, 2013 and May 10, 2013.

The Landlord's agent JL stated that he became resident manager on August 7, 2013, and that he had no personal experience with the residents. However, he stated that the “evidence speaks for itself” with respect to the Landlord's reasons for ending the tenancy.

The Notice of Violation dated December 12, 2012, is addressed to the Tenant BB and another person (“MK”), who are described as “residents”. The Notice states, *“Lady was seen in stairwell with young man. Drugs exchange. You were asked do you live here? Yes Suite 205. The same day Lady was seen letting prostitute in the building.”*

The Notice of Violation dated April 12, 2013, is addressed to the Tenants BB and LB, who are described as “residents”. The Notice states, *“complaint – witnessed drug transaction on April 11/2013. Afternoon outside main parking gate area – brown car – eviction may be in order.”*

The witnessed occurrence dated December 6, 2012, is an e-mail which states, *“I have witnessed drug deal between older lady and young guy in the stairwell by the lobby. It was two days ago. I asked if they live in our bldg – the lady said yes in # suite #205. Also [someone else] noticed that the same lady let prostitutes in to the bldg. One was sleeping in the basement by our workshop. Might be a good idea to put the note in their file or send them a warning.”*

The witnessed occurrence dated April 25, 2013, is an e-mail which states, *“I just want to report to you that this afternoon at 1:37 pm I witnessed that the tenant from suite # 205 was standing outside of the [rental property] and car pulled in for few seconds, some exchanged was made between the car occupant and our tenant then the car left. It was small car with [plate number]. That was the 3-rd time that I witnessed something that look like a drug deal with the same tenant from # 205.”*

The witnessed occurrence dated May 10, 2013, is a hand written note from another occupant in the rental property. It states, "UNIT 205 Spoke to [Tenant BB's] girlfriend. She is a hooker and she told me she is doing it for extra money. She has been seen by myself in front of our building strolling up and down the street. She lives here with [BB]. Her name is [MK]."

The Tenant BB gave the following testimony:

The Tenant denies that he has anything to do with any of the allegations contained in the Notices and the witnessed occurrences. The Tenant stated that he was not given any of the notices or witness occurrence statements until he was served with the Landlord's documentary evidence.

He stated that he is on methadone and cannot take illicit drugs, which he cannot afford, or he will be kicked off the methadone program. The Tenant stated that he has a friend who can get him cheap cigarettes and that the "drug deal" witnessed on April 11, 2013, was his probably his friend dropping them off. The Tenant said this happens regularly, and questioned why the Landlord didn't call the police if there were concerns about drug deals going on at the rental property.

With respect to the incident in December, 2012, the Tenant said he had no idea who the lady and young man were and that anyone could give a suite number. He questioned why they were not asked for their names in order to confirm that they lived in the building.

The Tenant stated that MK was his first roommate and moved out 1 ½ years ago. He stated that MK is not a woman and would not likely be perceived as a woman. This puzzles him because the witness occurrence statement of May 10, 2013, states that a woman said she was MK. The Tenant testified that no women live in the rental unit with him and his male roommate, LB.

### **Analysis**

When a landlord seeks to end a tenancy, the onus is on the landlord to prove on the balance of probabilities that the tenancy should end for the reasons indicated on the Notice to End Tenancy. In this case, the Notice gives the following causes to end the tenancy:

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord

Tenant has engaged in illegal activity that has, or is likely to:

- adversely affect the quiet enjoyment , security, safety or physical well-being of another occupant or the landlord
- jeopardize a lawful right or interest of another occupant or the landlord

I find that the Landlord has not provided sufficient evidence to support the reasons given in the Notice. The warnings are very vague and lack important details. For example, the Notice of Violation issued in December, 2012, does not identify the name of the woman or the young man who were observed in the stairwell. The Notice of Violation issued in April, 2013, gives even less information. It does not identify that the Tenant, or anyone permitted on the property by the Tenant, was involved at all.

I find that the Landlord provided insufficient evidence that the Tenant has engaged in any illegal activity.

For the reasons set out above, I find that the Notice is not a valid notice to end the tenancy and it is canceled. The tenancy will continue until it is ended in accordance with the provisions of the Act.

### **Conclusion**

**The Notice to End Tenancy issued July 31, 2013, is cancelled.** The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

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 19, 2013

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Residential Tenancy Branch