



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes MT, CNC

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking more time to apply to cancel a notice to end tenancy and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenants and the landlord's agent.

During the hearing, the landlord did not verbally request an order of possession should the tenants be unsuccessful in their Application.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to more to apply to cancel a notice to end tenancy and to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Sections 47 and 66 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agreed the tenancy began on December 20, 2012 as a 3 month and 11 day fixed term tenancy that converted to a month to month tenancy on April 1, 2013 for a monthly rent of \$745.00 due on the 1<sup>st</sup> of each month with a security deposit of \$372.50 paid.

The landlord provided a copy of a 1 Month Notice to End Tenancy for Cause issued on September 28, 2013 with an effective vacancy date of October 31, 2013 citing the tenants or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and put the landlord's property at significant risk; the tenants have engaged in an 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; and the tenants have not done required repairs of damage to the unit.

The Notice stipulates the tenants may dispute the notice within 10 days of receipt of the Notice. The tenants submit they received the Notice on September 28, 2013. Residential Tenancy Branch documents confirm the tenants applied for dispute resolution to dispute the Notice on October 9, 2013.

The tenants submit that they were unable to file their Application for dispute resolution within the 10 days allowed because the male tenant is enrolled in a mandatory program to receive income assistance and he was not allowed time off to deal with the matters. The tenants also submit that the female tenant has recently been diagnosed with leukemia and she is, at times, not able to deal with day to day issues.

The landlord submitted copies of several warnings provided to the tenants regarding a number of issues beginning August 25, 2013 and up to October 30, 2013. Three of these warnings were issued to the tenants after they had received the 1 Month Notice to End Tenancy.

All of the warnings require the tenants to clean their patio and to remove their bikes from the hallways and lobby. In addition the landlord notes that he has received noise complaints from guests in the hallways; reports that the tenants had someone else living in the unit; and reports that these tenants are allowing previously evicted tenants into the property.

The tenants submit that they do not have anyone else living with them. They also state that they have nowhere else where their guests can store their bikes when they come to visit and that the male tenant from time to time does collect scrap metal that he brings in a shopping cart that he leaves in the hallway. The tenants submit they do not disturb other tenants in the building.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) 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, or
  - ii. Put the landlord's property at significant risk;

- b) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
  - i. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- c) The tenant does not repair damage to the rental unit or other residential property, as required under section 32(3), within a reasonable time.

Section 47(4) goes on to say that within 10 days of receiving such a notice the tenant may dispute the notice by making an application for dispute resolution. And Section 47(5) states that if a tenant who receives a notice under Section 47 does not file an application for dispute resolution within 10 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Section 66 states the director may extend a limit established by the *Act* only in exceptional circumstances. Exceptional means, according to Residential Tenancy Policy Guideline 36, that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word exceptional implies that the reason for failing to do something at the time required is very strong and compelling.

Despite their testimony the tenants have provided no evidence to corroborate their submissions that they were not able to submit their Application for Dispute Resolution within the required 10 days.

The male tenant provided no supporting evidence to confirm that he was attending a program for income assistance or that he would not have been allowed time to file an Application.

Further, the female tenant has provided no supporting evidence to confirm that she has been recently diagnosed with leukemia or what was occurring over the course of the 10 days between September 28, 2013 and October 9, 2013 that prevented her from filing an Application. In addition, the female tenant provided no evidence to what had changed in her circumstances that allowed her to apply on October 9, 2013.

As such, I find the tenants have failed to provide sufficient evidence to establish they had exceptional circumstances that prevented them from filing their Application for Dispute Resolution within 10 days of receiving the 1 Month Notice to End Tenancy for Cause on September 28, 2013.

Therefore, I find the tenants failed to submit an Application for Dispute Resolution within the required time frames and are conclusively presumed to have accepted the end of the tenancy, pursuant to Section 47(5).

Conclusion

Based on the above, I find the tenancy has ended subject to the 1 Month Notice to End Tenancy for Cause issued by the landlord on September 28, 2013 and the tenants must vacate the rental property.

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: November 25, 2013

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Residential Tenancy Branch

