



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** CNC; OLC; MNDC; O

### **Introduction**

This Hearing dealt with the Tenant's Application for Dispute Resolution. On November 12, 2013, the Tenant filed an Application for an Order that the Landlord comply with the Act, regulation or tenancy agreement; for compensation for damage or loss under the Act, regulation or tenancy agreement; and for "other" orders. On November 22, 2013, the Tenant amended her Application to include a request to cancel a *1 Month Notice to End Tenancy for Cause* (the Notice) that she received on November 20, 2013.

Both parties appeared at the hearing and had an opportunity to be heard and respond to the other party's evidence.

It was determined that the Tenant served each of the Landlords with copies of the Notice of Hearing documents, including her amended Application, by registered mail.

It was also confirmed that the parties exchanged their documentary evidence.

### **Preliminary Matters**

The Residential Tenancy Rules of Procedure, Rule 2.3, states that for disputes to be combined on an application they must be related. I explained to the parties that I find that the Tenant's monetary claim and request for other Orders and an Order that the Landlords comply with the Act, regulation or tenancy agreement are not sufficiently related to the Tenant's application to cancel the Notice. The Tenant agreed that she wished to proceed with her application to cancel the Notice. For these reasons, I dismiss the Tenant's application for a Monetary Order and other Orders **with leave to reapply**.

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

1. Should the Notice be cancelled?

## **Background and Evidence**

The tenancy began on December 15, 2012 as a one-year fixed term tenancy which then converted to a month-to-month tenancy. Monthly rent is \$800.00, due on the 15<sup>th</sup> day of each month. The Tenant paid a security deposit in the amount of \$400.00 at the beginning of the tenancy.

The rental unit is a cottage which is located on the Landlords' residential property. The Landlords live in a house adjacent to the cottage. The parties share a large parking area, which has room for four cars, parked side by side. The female Landlord is a therapist and has a small studio at the residential property where she sees some clients.

This is the third application for dispute resolution that has been scheduled for a hearing with respect to this tenancy. The parties referred by file number to an application by the Tenant and a Hearing that was scheduled on a cross application. A search of the Residential Tenancy Branch's electronic filing system indicates the following background history:

1. The first application, which was heard on May 29, 2013, considered cross applications. The Tenant had applied for an Order that the Landlords comply with the Act, regulation or tenancy agreement and to provide her with quiet enjoyment, freedom from unreasonable disturbance, and reasonable use of the common property. The Landlords had applied for "other" orders. It was determined that the Landlords' application had been filed in error and it was dismissed. The Tenant's application for an Order that the Landlords comply with the Act was dismissed. The parties came to an agreement that the Landlords would ensure that the Tenant's vehicle would not be blocked in or out of the parking area and that the tenancy agreement would convert to a month-to-month tenancy effective immediately. The arbitrator also made findings that the Tenant was aware that the Landlords had children and a dog before she signed the tenancy agreement and that the daily noise from the Landlords' children playing hockey outside in the common area is not unreasonable.
2. The second application, which was heard on October 29, 2013, considered the Tenant's application for an Order that the Landlords comply with the Act, regulation or tenancy agreement and compensation for damage or loss under the Act, regulation or tenancy agreement. The Tenant submitted that the Landlords were not complying with the terms of the settlement agreement. The arbitrator found that the Landlords have made substantial efforts to ensure that the Tenant's parking access is not blocked and that the Tenant suffered no damage or loss. In addition, the arbitrator found that the Tenant made no effort to minimize her inconvenience by asking the Landlords or their guests to move their

cars on the few occasions that she was blocked for a short time. The Tenant's application was dismissed. The arbitrator also noted that the Landlords filed a copy of a letter purporting to end the tenancy. She urged the parties to speak to an Information Officer to determine the proper procedures for ending a tenancy.

On November 19, 2013, the Landlords issued a notice to end the tenancy and placed the Notice in the Tenant's mailbox. The form of this Notice complies with the requirements of Section 52 of the Act. The Tenant received the Notice on November 20, 2013, and disputed it on November 22, 2013.

The Notice has an effective date of January 14, 2014, and indicates that the tenancy is ending because the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlords.

The Landlords gave the following testimony:

The male Landlord stated that the Landlords are relatively new landlords and therefore have not had dealings with the Residential Tenancy Branch before this tenancy.

The male Landlord testified that over the past 8 months, the Tenant has become increasingly angry and struggles with the fact that the Landlords have children. He stated that there has been a series of ever increasing accusations against the Landlords that are unfounded. The male Landlord stated that he has to leave work to deal with the situation at home and that his employer is becoming weary of it.

The female Landlord stated that her home based business is being impacted by the Tenant's bizarre behavior. She alleged that the Tenant has a thirst for conflict and has no social boundaries. The Landlords provided a copy of a letter dated March 5, 2013, from the Tenant to the male Landlord.

The female Landlord provided dates and particulars of incidents that had occurred between March and May, 2013. She stated that on April 21, 2013, the Tenant took photographs of the Landlord's children and her clients' underage children without their knowledge or consent. The Landlords informed the parents, who strongly objected. The Tenant was asked to stop photographing the children. In May, the Landlords saw the Tenant in her car taking more photographs. The police were called.

The male Landlord described a situation that occurred on September 23, 2013, at about 11:00 p.m. The Landlords were watching a movie on television and their children were in bed asleep. The Landlords heard loud screams "like someone was being murdered" and were alarmed. The male Landlord ran to the rental unit and as he opened the front

gate, the screams stopped. His neighbour also ran out of his house. The two men knocked on the Tenant's front door but there was no response. The male Landlord told his neighbour he was calling the police. His neighbour said he had already called the police before he ran out of the house. When the police arrived, the Tenant was lying on the floor in a catatonic state; however, when the police tried to move her, she started screaming again. About ½ an hour later an ambulance came and took her away. The Tenant was screaming all the way down the drive way. She was kept overnight because the police felt she was a threat to herself and to others. No charges were laid.

The Landlords gave her a letter purporting to end the tenancy and were advised at the Hearing on October 29, 2013, that it was not a valid notice to end the tenancy, so they issued the Notice. The female Landlord stated that the Tenant continues to frighten her children and visiting children by "giving them the finger" and making faces at them.

The Landlords provided copies of the following documents in evidence:

- A written account of the incident that occurred on September 23, 2013, from the neighbour, along with a written account of other events where the Tenant was loudly slamming doors at night, and once as late as 2:30 a.m.
- Copies of emails from two parents, voicing their concern about the Tenant photographing their children.

The Tenant gave the following testimony:

The Tenant submitted that the Notice was issued as a form of retaliation in answer to her complaint about not having access to her parking spot. She stated that it was against Section 43 of the *Human Rights Code* for the Landlords to have issued the Notice. Section 43 of the *Human Rights Code* provides:

**43** A person must not evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on, deny a right or benefit to or otherwise discriminate against a person because that person complains or is named in a complaint, gives evidence or otherwise assists in a complaint or other proceeding under this Code.

The Tenant stated that the Landlords gave her no warning letters, or an opportunity to correct a breach of the Act, regulation or tenancy agreement.

The Tenant stated that the Landlords are not truthful and that they are well aware of the provisions of the Act, because they gave her a letter which stated that she had to be out of the rental unit by 1:00 a.m. on December 14, 2013. She submitted that the Landlords would not know that tenancies end at 1:00 if they were not familiar with the Act. The

Tenant provided a copy of the Landlords' letter, dated October 12, 2013, purporting to end the tenancy.

The Tenant stated she was taking photographs of the children playing hockey because she wanted to have documentation of how close they were to her vehicle and how it was in danger of being damaged.

I asked the Tenant for her comments with respect to the occurrence on September 23, 2013. The Tenant replied that she was not sure that she was taken away by ambulance, but that when she woke up the next morning she was not in "the unit". She said it was not up to her to speculate about what had happened and that she did not remember. Later on in her testimony, she stated that she woke up in the police station. The Tenant submitted that she believes it is the Landlords who instigated the incident. I asked her how they had done that and she replied that she didn't know. Later in her testimony, she stated that she may have started screaming because the male Landlord and the neighbour were "looking in my window".

The Tenant stated that she wants to move out of the rental unit because she is very unhappy there, but that she cannot find suitable alternate accommodation. During the Hearing, a resolution between the parties was attempted; however, a mutual agreement to end the tenancy could not be achieved.

The Landlords stated that they would consent to extend the effective date of the Notice until February 14, 2014; however, the Landlords clearly stated that the tenancy needs to end in order to stop the Tenant's unreasonable disturbances. The Tenant stated that she could not be sure that she could move on any given date. Therefore, it is before me to determine whether the Notice is valid to end the tenancy, or should be cancelled.

### **Analysis**

I find that the Notice was served in accordance with the requirements of the Act and that the effective date complies with the Act. Further, the reasons indicated on the Notice are consistent with the provisions of section 47 of the Act.

In making my determination considering the merits of the Notice, I must consider whether the Landlords have demonstrated that the Tenant's actions violated the Act in a manner described on the Notice, based on a balance of probabilities. A balance of probabilities is not the same as the criminal standard of proof beyond a reasonable doubt. Rather, if I find it more likely than 50% that the event(s) occurred as alleged by the Landlords, then the Landlords have established proof based on a balance of probabilities.

In this case, the Landlords allege that the Tenant has unreasonably disturbed or significantly interfered with the Landlords. The Landlords do not have to demonstrate that the Tenant intentionally disturbed or interfered with the Landlords in a significant way; rather, the Landlords only have to show that the Tenant's actions did have that result. I find that the preponderance of evidence demonstrates that the Landlords have been unreasonably disturbed by the Tenant's behavior.

In light of the above, I uphold the Notice with the effect that the tenancy will end. I accept the Landlords' verbal consent to extend the effective date to February 14, 2014, in order for the tenant to find other accommodation.

The Tenant's application to cancel the Notice is dismissed without leave to reapply. Further to the provisions of Section 55 of the Act, the Landlords are hereby provided with an Order of Possession effective February 14, 2014.

### **Conclusion**

The Notice to End Tenancy is valid and is upheld. The Tenant must vacate the rental unit on or before 1:00 p.m., February 14, 2014.

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: January 07, 2014

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Residential Tenancy Branch