



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Atira Property Management Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, MNDC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for cause and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant and an agent for the landlord company attended the hearing and both gave affirmed testimony. At the commencement of the hearing it was determined that the parties had exchanged evidence but none was on the hearing file and the tenant stated that he did not have the entire package provided by the landlord. The matter was adjourned to later in the day to allow evidence to be emailed to me and for the landlord to re-copy his entire evidence package and re-serve the tenant, which the landlord agreed to do. The hearing commenced again and both parties were present. All evidence had been received by the tenant, however 2 pages were missing from my package. With the landlord's consent, the hearing continued in the absence of those pages.

The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No further issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Should the notice to end tenancy for cause be cancelled?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy

agreement, and more particularly for aggravated damages for the landlord denying the tenant's guests access to the rental unit?

### Background and Evidence

The landlord's agent testified that this fixed term tenancy began on March 20, 2010, was renewed from time-to-time and expired on May 5, 2011 and then reverted to a month-to-month tenancy. Rent in the amount of \$375.00 per month is payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$187.50 which is still held in trust by the landlord. A copy of a 6-page tenancy agreement has been provided which is signed by a landlord on March 10, 2010 and by a tenant on March 22, 2010, with an attachment entitled House Rules and the landlord's agent referred to as an Addendum. It contains signatures of the tenant and a witness.

The landlord's agent further testified that the tenant was personally served on February 19, 2014 with a 1 Month Notice to End Tenancy for Cause which is dated February 19, 2014 and contains an expected date of vacancy of March 31, 2014. No one has provided a copy of the notice. The landlord's agent testified that the reasons for issuing the notice are: Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and breach of a material term of the tenancy which was not corrected within a reasonable time after written notice to do so.

The landlord's agent testified that on numerous occasions the tenant's guests have used the common area washroom for long periods of time, in excess of an hour, have been knocking on other tenants' doors, and have been found sleeping in the bathroom.

The landlord has provided many pages of handwriting that the landlord's agent testified are notes from a log book kept by the employees in the building. The building is staffed 24 hours per day and the rental unit is a single room accommodation which is bound by local by-laws which, in part, require the landlord to keep accurate guest ledgers. The log book is that ledger. The landlord's agent read a number of the log notes in the hearing, and the basis of them are as follows:

- December 27, 2012 – guests of the tenant were asked for identification but stated they had none and were asked to leave; tenant told them they didn't have to listen to the writer who is an employee of the landlord, the tenant uttered some rude comments and made threatening gestures at the writer; the guests did not leave and the writer called 911.

- January 23, 2013 complaint received that the tenant's dog pooped in the common hall.
- January 24, 2013 the employee told the tenant that his behaviour in addressing staff in such a rude behaviour would not be tolerated, and that riding his bike in the common areas was not permitted. The tenant denied riding his bike.
- February 18, 2013 complaint of the tenant arguing and fighting with his guests. Also of loud music with the door open.
- April 23, 2013 a guest of the tenant in the bathroom for lengthy period of time. Tenant was told that guests would not be permitted if the behaviour continued.
- April 24, 2013 complaint from another tenant that the tenant banged on the floor from 1:00 a.m. till 3:00 a.m.
- October 24, 2013 a guest of the tenant punched another tenant in the face. Police were called who escorted the guests out. Also a complaint received that the tenant's dog urinated in the common hallway.
- January 21, 2014 the tenant was permitted to make a phone call using the office phone but was told it was a business phone and had to be brief. Tenant was insulting to the staff member when told that time was up.
- February 13, 2014 a guest of the tenant knocked several times on a neighbour's door between midnight and 9:30 a.m. on February 19, 2014. She also tried to enter that unit.
- February 20, 2014 Tenant told landlord's agent to cancel the notice to end tenancy or he would regret it.

The landlord's agent testified that the Addendum and rules require that: "...All visitors must provide valid ID to the front desk before proceeding."

The landlord's agent also testified that breach letters have been issued to the tenant and copies have been provided:

- Dated April 25, 2011 for the tenant riding his bicycle in the lobby even when asked not to, causing a disturbance, and keeping neighbours awake from 1:00 a.m. to 3:00 a.m. on April 21 and 22, 2011;
- Dated June 18, 2012 for threatening staff on June 13, 2012;
- Dated January 21, 2014 for unacceptable behaviour toward staff and disregard for the House Rules;
- Dated February 13, 2014 for complaints by other tenants of the tenant's guests knocking on doors and trying to open other tenants' doors.

All but one of the breach letters indicate that if not corrected, a notice to end tenancy would be issued.

With respect to the tenant's claim for a monetary order, the landlord's agent states that the tenant was not denied guests but was told that employees would escort guests up because they could not allow guests to wander throughout the building. The tenant replied that the landlord can't do that. The tenant has a constant disregard for employees of the landlord and for the rules and Addendum to the tenancy agreement.

The tenant testified that the notice to end tenancy does not have a checkmark in the box beside "Breach of a material term of the tenancy which was not corrected within a reasonable time after written notice to do so," but states, "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, and seriously jeopardized the health or safety or lawful right of another occupant or the landlord."

The tenant testified that the employees will write whatever they feel like in the log book, and he's seen it. Further, all of the notes are hearsay and most are dated. The assault described by the landlord's agent never took place at all, no charges were laid and the landlord has no proof. Further, the guest has not returned.

The tenant also testified that 2 previous hearings have been held for the same reason as this hearing. The first hearing abruptly ended because the landlord's agent at the time didn't have his paperwork. The same thing happened the next time and the same issues were brought up at that hearing.

No copies of previous Decisions of the Residential Tenancy Branch or any other tribunal or Court have been provided.

The tenant testified that his guests have used the bathroom to shower but remaining in there for hours is exaggerated and magnified by 10 in the log book. The tenant has never made a threat if the notice to end tenancy wasn't cancelled, and when the 2 pet incidents took place, the tenant apologized and cleaned it up.

It is not uncommon for the tenant's guests to not have identification on their person when visiting the tenant, and employees don't need to see it every time especially when they've provided it in the past.

The tenant also testified that the Addendum to the tenancy agreement is not legal. An Arbitrator previously ruled that it's not an Addendum but rules only.

With respect to the telephone incident, the tenant testified that he had asked to use the phone and advised the employee of the landlord that it would be a long call. After 10

minutes the employee abruptly told the tenant to hang up or the phone would be unplugged. The tenant was rudely rushed but didn't say anything after hanging up the phone. It was 3:30 in the morning and even though it is a business phone, no one would be calling.

The tenant has also provided character reference letters from other tenants in the building and friends:

- Dated March 18, 2014 from another tenant who has known the tenant for 3 years and knows him to be kind and courteous and hopes he can continue on as a tenant;
- A neighbour for over 2 years who has never had a problem with the tenant or his guests;
- Dated March, 2014 from another tenant who has known the tenant for about 4 years and knows him to be a person of good behaviour and asks that he not be removed from his residence;
- Dated March 18, 2014 from a friend of the tenant who describes the tenant as a quiet individual who has a lot of respect and minds his own business; a very respectful, decent, good man. The letter also complains that the employees insist on escorting him when visiting and often ask for identification.
- Dated March 17, 2014 from another tenant stating that the tenant is a good tenant, no problems, no trouble;
- Another tenant who states there have been no problems over the last year;
- Another tenant who states that the tenant seems like a good person, polite when they run into each other;
- Dated March 17, 2014 stating that the has been a good neighbour;
- Dated March 11, 2014 from a neighbour saying the tenant has always been respectful and friendly;
- Dated March 18, 2014 from a neighbour who states that he/she feels safe having the tenant as a neighbour and that the tenant has been treated with respect by his friends.

With respect to the claim for the monetary order, the tenant testified that the landlord's agents and employees are bullying the tenant; calling the police, not allowing guests. The log book notes are exaggerated and blown way out of proportion.

In rebuttal, the landlord's agent testified that the log book is not used for 'willy nilly' writing, but is meant for the Courts. The landlord's agents and employees have not

restricted guests, but want the tenant to escort them. The tenant has shown a history of not being responsible for his guests and the pattern of behaviour has been constant.

### Analysis

Firstly, dealing with the House Rules referred to by the landlord's agent as an Addendum, the tenant argues that the document is not a legal Addendum and therefore it does not form part of the tenancy agreement. I find that they are rules of the building, and I find that the tenant agreed to those rules when he signed the document on March 22, 2010 at the time that the tenancy agreement was signed. Therefore, I find that the tenant agreed to those rules.

The parties have testified that the reasons for issuing the notice to end tenancy are: "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord." I have reviewed the evidence and I accept the testimony of the landlord's agents that employees don't write 'willy nilly' or whatever they feel like in the log, contrary to the tenant's testimony. I further find that the log is riddled with notations about rude behaviour of the tenant and the tenant's guests and refusal to comply with the House Rules, ignoring breach letters, and continued behaviour the landlord's agents warned him to change. I agree with the tenant that some of the notations are dated, but I also agree with the landlord's agents that they show a pattern of behaviour that has been quite constant.

The landlord's agent testified that the notice to end tenancy was issued on February 19, 2014, served on the tenant personally that day, and contains an expected date of vacancy of March 31, 2014. The tenant did not dispute that testimony but has not provided me with a copy of the notice he applies to cancel.

Further, the tenant testified that there have been 2 previous hearings that were abruptly ended because the landlord didn't have the paperwork together. The tenant has not provided any evidence of that, nor of any other hearings. The tenant has not provided any evidence other than character letters, including evidence of bullying. The tenant signed the House Rules, whether considered an Addendum or not, I find that the tenant agreed to the rules and has not established that the landlord has caused aggravated damages of any sort, or that the notice to end tenancy should be cancelled, and the tenant's application is hereby dismissed in its entirety.

Conclusion

For the reasons set out above, the tenant's application for an order cancelling a notice to end tenancy for cause is hereby dismissed.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

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: March 25, 2014

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Residential Tenancy Branch

