



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OPC, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied for:

1. An Order cancelling a Notice to End Tenancy – Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied for:

1. An Order of Possession - Section 55; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

It is noted that at the end of the hearing and while the Landlord was providing final summary comments, the Landlord left the conference call and did not call back into the conference after approximately 5 minutes. During this time the Tenants also left the conference call. It is unknown whether the Parties left the conference by accident or by intention.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Landlord entitled to an order of possession?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The tenancy of a main floor unit in a house with two additional units started in the spring of 2010. Rent of \$1,350.00 is payable monthly. The Landlord's son lives in one of the additional units, a lower unit.

The Landlord states that in mid April 2014 the Tenant broke the window of the lower unit. The Landlord states that this occurred because the Tenant was unable to get out of the driveway as it was blocked by the car belonging to the Landlord's son. The Landlord states that the Tenant first tried to call to the son through the window then knocked on the window and then banged on the window causing it to break. The Landlord states that the Tenant offered to pay for the repair of the window and that although the police were called, no charges were laid. The Landlord states that his son had been sleeping under medication at the time of the incident and was so disturbed that for a week following the incident the son was unable to sleep at his unit.

The Parties agree that the Tenant was given a one month notice to end tenancy for cause (the "Notice") by May 30, 2014. The Notice sets out that the 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; and
- Put the landlord's property at significant risk.

The Landlord states that a year and a half prior to the April 2014 incident the other Tenant assaulted his son. The Landlord states that in January 2013 the previous wife of the person who occupies the 3<sup>rd</sup> unit also complained about the Tenants, of the noise from their unit and of the one Tenant's swearing and insulting of the other tenants. The Landlord states that on July 2, 2014 police attended the Tenants unit for unknown reasons and that this incident disturbed everyone. The Landlord states that the Tenants have affected the environment by being confrontational, parking too many cars and taking up more parking spaces than was originally agreed to. The Landlord states that the Tenants have experienced thefts and vandalism due to the numerous cars being parked at the unit and have placed the Landlord's property at risk. The Landlord provided a written submission and photos.

The Tenants state that on the date that the window was broken the Tenants' child was ill and that they needed to get the lower tenant to unblock their car's exit if their child got worse and they had to seek medical attention. The Tenants state that the lower tenant was ignoring them and did not move his car. The Tenants state that the Landlord was not present during the incident and did not know what happened. The Landlord states that he was present to hear shouting and screaming and thought that someone was playing around. The Landlord states that the incident caused his son to be "so mad".

The Tenant states that she did not assault the Landlord's son and described the circumstances of the son being aggressive towards her and making threatening comments. The Tenant provided a written submission detailing the history of past and current tenants and disturbances caused by the Landlord's son.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Although the Tenant's written submissions indicate some provocative behavior on the part of the Landlord's son, I accept that the Tenants

are also confrontational and that tempers have escalated. Given this context, based on the undisputed evidence that the Tenant most recently broke the window on the lower unit and considering the overall evidence of both Parties, I find that the Landlord has substantiated on a balance of probabilities that the Tenants have unreasonably disturbed another occupant or the Landlord. As a result, I find that the Notice is valid and that the Tenants are not entitled to a cancellation of the Notice. The Tenants' application is therefore dismissed. As the Notice is valid, I find that the Landlord is entitled to an order of possession. Taking into consideration that the Tenants have paid the rent for July 2014, I make the order of possession effective July 31, 2014. As the Landlord did not have to make an application to obtain the order of possession and could have obtained such an order on oral request at the hearing, I decline to award recovery of the filing fee.

#### Conclusion

**I grant** an Order of Possession to the Landlord effective 1:00 p.m. on July 31, 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: July 18, 2014

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Residential Tenancy Branch

