



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice")

The listed parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary matter*-Under section 11.8 of the Rules in effect when the tenant's application was filed, the party submitting digital evidence must ask the other party if that party was able to gain access to the digital evidence. In this case, the landlord submitted digital evidence; however, the tenant did not access that digital evidence and the landlord confirmed he did not make inquiry of the tenant as to whether or not she was able to gain access to the digital evidence. Therefore I have excluded the landlord's digital evidence, and proceeded on his documentary evidence and the oral evidence of the parties taken at the hearing.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice?

Background and Evidence

The tenancy began in 2011, monthly rent is \$490, and the tenant paid a security deposit of \$245, according to the tenant. The landlord's agent for the owner (hereafter "landlord") was not able to give the exact date and there was no written tenancy agreement with this tenancy.

Pursuant to the Rules of Procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause. The Notice was dated May 29, 2014, was delivered on May 29, 2014, by attaching it to the tenant's door, according to the landlord, and listed an effective end of tenancy on July 1, 2014.

The causes listed on the Notice alleged that the tenant has allowed an unreasonable number of occupants in the rental unit, that 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, put the landlord's property at significant risk, has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, or jeopardized a lawful right or interest of another occupant or the landlord.

In support of their Notice, the landlord submitted that the following:

*The tenant has allowed an unreasonable number of occupants in the rental unit-*

The landlord stated that the tenant's son is living in the rental unit, and according to the "shelter" agreement with the social assistance agency, only one person is to be occupying the rental unit.

In response, the tenant submitted that the shelter agreement supplied by the landlord as evidence was a form made up by the landlord for purpose of the hearing, as the shelter agreement she submitted into evidence shows that 2 people are permitted to occupy the rental unit. Additionally, the tenant pointed out that the landlord's evidence listed the incorrect address for the rental unit, different handwriting, a different signature, date and other information. The shelter agreement supplied by the tenant also shows a completed rent receipt for the tenant's first month's rent.

*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, put the landlord's property at significant risk-*

The landlord submitted that in late February or early March 2014, the landlord, who is also caretaker of the residential property and building, attempted to assist a real estate agent in accessing the rental unit for a showing, when they noticed that the locks had been changed. According to the landlord, the tenant's son did give the landlord a key, but began threatening the landlord and the real estate agent.

The landlord submitted that the actions of the tenant's son seriously jeopardized the sale of the home and referred to the real estate agent's letter, which was submitted for evidence.

In response, the tenant submitted that contrary to the landlord's evidence, the landlord's agent here assaulted her son, which led to a hospital stay. There have been charges laid against the landlord's agent for the assault, according to the tenant.

The tenant questioned why there would be no police report if the landlord or the real estate agent were threatened.

The tenant submitted that the locks were changed when the landlord entered their rental unit with a stranger and without notice.

*The tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, or jeopardized a lawful right or interest of another occupant or the landlord-*

The landlord submitted that the tenant's son has falsely accused him of assault and perpetrated a fraud with social assistance as he was living at the rental unit.

The landlord confirmed that the charges are still pending until his court hearing.

### Analysis

The landlord had the burden of proving the causes listed on the Notice which was issued in accordance with section 47 of the Act, and after considering all evidence, I find that the landlord has not presented sufficient evidence to prove any of the causes listed on the Notice.

In reaching this conclusion, I find the landlord failed to prove that only one person was allowed to live in the rental unit, as the shelter agreement provided by the landlord appeared to have been created for the hearing as evidence. This document contained a different rental unit address, not the one of the tenant. The document supplied by tenant, which shows the signature of the landlord's agent and the correct address, shows that 2 people were allowed to live in the rental unit.

Another way a landlord could demonstrate the number of occupants allowed in a rental unit would be through a written tenancy agreement, which the landlord has failed to provide for this tenancy. I find the landlord has failed to prove the first cause listed on their Notice.

As to the next three causes, all interrelated according to the landlord, I cannot conclude that any alleged incident occurring at the end of February or early March would lead to the issuance of the Notice, as the Notice was dated and served on May 29, 2014, three months later. Had this alleged incident 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, put the landlord's property at significant risk, I find a reasonable response from a reasonable person would be to issue a 1 Month Notice immediately seeking the tenant's eviction, and not wait for three months.

I therefore find the landlord has failed to prove these causes listed on the Notice.

As to the remaining two listed causes regarding alleged illegal activity, I cannot accept that the tenant's son made false accusations against the landlord, as the landlord was actually charged and the court case is currently pending, awaiting trial.

I also find the landlord has submitted insufficient evidence to prove that the tenant or her son has made any false statements to the social assistance agency.

Due to the above, I therefore find that the landlord has submitted insufficient evidence to prove the causes listed on the Notice.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause dated and issued on May 29, 2014, for an effective move out date of July 1, 2014, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

The tenant is reminded of section 31 of the Act, which prohibits a tenant from changing a lock to the rental unit, with a landlord's consent or authority from the Director.

Conclusion

I grant the tenant's application seeking cancellation of the landlord's 1 Month Notice, and the Notice is hereby cancelled with the effect that the tenancy will continue until ended in accordance with 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: July 24, 2014

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Residential Tenancy Branch

