



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KELSON GROUP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OLC, FF

### **Introduction:**

The tenant applies for an order to cancel a Notice to End Tenancy, which alleges that:

- the tenant or a person permitted on the residential property has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- the tenant or a person permitted on the residential property has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- the tenant has engaged in 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.

### **Issue(s) to be decided:**

Should the Notice to End Tenancy be cancelled, or has the landlord established grounds to end this tenancy?

### **Background and Evidence**

This tenancy began April 1, 2014. The current monthly rent is \$800.00. A security deposit of \$400.00 was paid on February 20, 2014.

A one month Notice to End Tenancy was given to the tenant on July 31, 2014, to end this tenancy effective August 31, 2014.

The male representative of the landlord has witnessed frequent unauthorized guests coming and going after short visits to the subject premises. On three occasions he has witnessed cash being exchanged. He is aware that the RCMP has the premises under surveillance for illegal drug activity. A window and door has been broken by a guest of the tenant.

The female representative manages the premises. She has no problem with the elderly female tenant, but is fearful of the tenant's son who is regularly at the premises. She has been the subject of verbal abuse by the tenant's son who has a short temper. She has also witnessed frequent guests coming and going for short visits. One such guest has been previously evicted for illegal drug activity at the premises, and has been told

not to return. Other occupants have advised her that they have witnessed guests to the premises fighting in the hallway and parking lot. One other tenant told her she has been assault by a guest of the tenant, and is afraid to come forward and testify about this, for fear of repercussions.

The tenant's son attended the hearing, and testified that his mother is not well. He has been providing some care for her. She is happy where she lives and does not want to move. He does not live with her on a full time basis and has his own home. He stays with her about 10 days per month. He acknowledges having a violent past, and being involved in fights and assaults, but contends if this was continuing he would be arrested. His mother is hard of hearing and lets other unknown people in at times. She let in the former female tenant who had been evicted, because she had lost her keys. The tenant's son testified that at times his son and daughter come to borrow money, and perhaps this is what the landlord has witnessed. He confirmed the front window and door had been broken by a person whose name he knows, but denies this person was there as his guest. He had been told by the manager that a prostitute had been seen at the premises, and he speculates that this may have been his daughter who does not always dress appropriately.

#### **Analysis:**

The landlord bears the onus of proof to establish that there is cause to evict the tenant, based upon conduct of her guests. I note that some of the testimony of the female representative of the landlord is in the form of hearsay evidence. This is evidence of things told to her by others. While accept that others have made complaints to her, the nature of these complaints is not first hand testimony. This testimony is not supported by witness statements or affidavits, or corroborated by the complainants. There is no opportunity to question anyone about the complaints or their accuracy. I therefore attach little weight to this hearsay portion of the landlord's evidence.

I accept the testimony of frequent traffic coming and going from the premises, of the exchange of money with some guests to the premises, of the presence of at least one person who allegedly dresses like a prostitute, of a guest having broken the window and door, and of the unwanted return to the premises of a former tenant who was evicted for illegal drug activity and told to stay away. I further accept that the manager has been verbally abused by the tenant's son, and is fearful of his quick temper. All of this is first hand evidence given by the landlord's representatives.

While I accept that the tenant's son provides some degree of care for his mother, I prefer the testimony of the landlord's representatives over his with respect to activity at the premises. I find his explanations and justifications to be hollow and contrived. For example, it is illogical that if indeed he lives full time elsewhere, that his adult children would come to their grandmother's home to borrow money from him. His explanation that his daughter could be confused with a prostitute because of the way she dresses is shallow and smacks of pure diversion of fact. His explanation that his mother let in the former female tenant because she had lost her keys, fails to acknowledge that the

former female tenant would not have had any keys any longer. He acknowledges he is aware of the male who broke the window and door. He does not actually deny that there is illegal activity at the premises, but questions that if this is the case, why have the RCMP not intervened.

While finding the tenant's son's testimony to be unconvincing, the landlord's evidence fails to prove that there is in fact illegal activity occurring at the premises, although the activity demonstrates hallmarks of drug related activity. I nevertheless find on a balance of probabilities, that the landlord has sufficient cause to end the tenancy. I accept that the ongoing coming and going of the guests coupled with the abusive language of the tenant's son and the physical damage to the premises has combined to demonstrate an unreasonable disturbance of the landlord's manager. It is clear that the elderly tenant has no ability to control these guests to the premises. I also find that the landlord's property is at significant risk of damage, and in fact has already sustained damage which I accept is attributable to a guest of the tenant.

The Notice to End Tenancy states the tenancy will end July 31, 2014 but I note that August rent has been paid. Accordingly, the tenancy is extended on a use and occupation basis to August 31, 2014, and shall end on that date.

The tenant's claim to have the Notice cancelled is dismissed.

**Conclusion**

The tenancy shall end August 31, 2014. The claim of the tenant is 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: August 27, 2014

---

Residential Tenancy Branch