



# 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 dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession pursuant to section 47; and
- b) To recover the filing fee for this application.

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- c) To cancel a notice to end tenancy for cause pursuant to section 47;

### **Preliminary Issue:**

The parties noted that the two applicants on file #826319 are actually the same person who is also known with an alternate first name. The files were amended accordingly.

### **Service:**

The Notice to End Tenancy is dated August 30, 2014 to be effective September 30, 2014 and the tenant confirmed it was served personally. Both parties gave evidence that they received each other's Application for Dispute Resolution by personal service. I find the documents were legally served for the purposes of this hearing.

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

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in April 2012, rent is \$900 a month and a security deposit of \$450 was paid. The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord provided four letters in evidence. One said there was excessive noise, loud arguing, problematic friends visiting by day and in the early morning hours, several issues of violence and theft and other tenants did not want to live in the building, another letter reiterated the same issues and said they were concerned for their health and safety and getting enough sleep at night to work next day, another letter notes incidences since August 30, 2014 and in particular one on September 9, 2014 where there was yelling, 'filthy' language and a knock on his/her door from a workman in the building requesting him/her to call the Police because of the aggressive behaviour of the tenants in this unit (this tenant notes "the man" from the unit is the only person disturbing their peace on a regular basis). A fourth letter details loud music to 4 or 5 a.m. and how their apartment was broken into and the police found the items in this unit and there has been another attempt to break in since.

The landlord said some tenants have already left because of the problems caused by these tenants and he is likely to lose more because of the disturbances.

Only one of the two tenants attended the hearing. He said there was a joint tenancy agreement but the problems were not caused by him. He said they may have been caused by his co-tenant but he does not know. He provided evidence of airline tickets to show he was out of town between August 3, 2014 and September 5, 2014 when many of the alleged incidents occurred.

When the preponderance of the evidence from other tenants was discussed with him, the landlord and he agreed to a move-out date of December 31, 2014 in order to give the other tenant and him time to organize their affairs.

Included with the evidence are copies of airline tickets and four letters of complaints from other tenants.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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**Analysis:**

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. The cause cited by the landlord is section 47(1) (d) of the Act: *The tenant or a person permitted on the*

*residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord*

I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the causes cited, namely, that the tenants or a person permitted on the property by them has significantly interfered with or unreasonably disturbed another occupant or the landlord. Four tenants in their letters support the landlord's oral sworn testimony that these tenants have frequent late night guests who yell and argue using inappropriate language, play loud music late at night and who appear to have been guilty of theft. Although the tenant who attended the hearing may not have caused the disturbances and his evidence is supported by the one letter that states 'the man' and mentions dates of September 2 and 4, 2014 when this tenant was out of town, I find as fact that this is a joint tenancy and the Act is clear in section 47 that a good cause to end the tenancy is if "*The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.*"

For all of the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy is terminated on September 30, 2014. As agreed by the parties, an Order of Possession is issued effective December 31, 2014.

**Conclusion:**

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on September 30, 2014. An Order of Possession is issued to the landlord effective December 31, 2014.

As the landlord was successful in his application, I find he is entitled to recover the filing fee of \$50 from the tenants. **I HEREBY ORDER that the landlord may recover this fee by deducting \$50 from the security deposit (\$25 from each tenant's) leaving a balance in trust of \$400 (\$200 each). In the alternative, the landlord may collect \$25 from each tenant to recover the fee.**

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: November 05, 2014

