



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, CNC, OLC, FF

### Introduction

This hearing dealt with an application by the tenant for orders setting aside a 1 Month Notice to End Tenancy for Cause; granting her more time in which to make that application; and compelling the landlord to comply with the Act, regulation or tenancy agreement. Both parties appeared and had an opportunity to be heard.

The hearing was originally scheduled for November 6, 2014 at 9:00 pm. However, the landlord had another hearing scheduled for the same date and time so this hearing was adjourned, with the consent of both parties, to a date and time convenient to both, November 21 at 3:00 pm. The hearing did proceed on November 21 as scheduled.

### Issue(s) to be Decided

- Should more time be granted to the tenant in which to file this application?
- Does the landlord have grounds, within the meaning of the *Residential Tenancy Act*, to end this tenancy?
- Should any additional order be made against the landlord and, if so, on what terms?

### Background and Evidence

The month-to-month tenancy commenced June 1, 2012. The monthly rent, which is due on the first day of the month, was \$700.00. Effective August 1, 2014, the rent was increased to \$725.00. The tenant does not dispute that increase.

There is a written tenancy agreement. The relevant provisions are:

"I/We agree that the premises shall be occupied by:[tenant and daughter] and only those persons listed herein shall be permanent occupants of the premises unless otherwise authorized in writing by the landlord.

I/We agree, not to assign or sublet the premises without first obtaining written consent of the landlord or his agent."

The rental unit is three bedroom, 2000 square foot town house. The tenant moved into the rental unit with her teenage daughter.

At some point in the past the tenant's brother, who had just recently moved to this community and was looking for a home for he and his family of five, asked the landlord if he had any place to rent. The landlord said no but he could move in with his sister until a place became available. The landlord had not talked to the tenant about this in advance. Upon receiving the landlord's consent the brother and his family moved in with the tenant. They lived with her for several months until they were able to rent their own place. The rent remained the same during this period.

Later that year the tenant was laid off work. A friend who was going through some personal difficulties asked if he could stay with the tenant part of the time. The tenant agreed. She did not consult the landlord in advance. When the landlord subsequently approached her about the new occupant he told her she should have discussed it with him but since he had not talked to her about moving her brother into the house one cancelled the other. The landlord also said that if the friend was going to stay in the rental unit there have to be a new tenancy agreement signed.

The tenant promised never to move someone into the unit without the landlord's prior approval again.

A new tenancy agreement was never presented and shortly after the tenant's friend moved out.

Two weeks later the tenant's sister called her. She was also going through a difficult personal time. The decision was made that she would come to this community and stay with the tenant.

There tenant says that as soon as her sister arrived in town, on or about August 1, she went to the landlord's home. No one was there. No further attempt was made to contact the landlord even though this is a small community and the tenant is familiar with the landlord's place of business and has his contact information. In addition, the landlord's brother, who acts as the landlord's agent and collects the rent on behalf of the landlord, lives next door to the tenant. The tenant did not talk to the brother until October 1 when she paid the October rent.

Two weeks after her sister arrived the tenant saw the landlord outside one of his other properties. She told him that her sister wanted to stay with her. The landlord said that if there were going to be two adults living in the unit he wanted more rent. The landlord and the tenant had an argument on the issue of rent.

On September 15 the landlord issued and posted a 1 Month Notice to End Tenancy for Cause. The reasons listed on the notice were:

- Tenant has allowed an unreasonable number of occupants in the unit.
- Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

When asked for particulars about the second ground, the landlord advised that the tenant's actions have really upset him.

The tenant filed this application for dispute resolution on September 19.

The tenant paid the rent of \$725.00 on November 1, 2014. No receipt was given for the payment. Her sister continues to reside with her.

#### Analysis

The tenant filed this application for dispute resolution within the time limit for doing so. Accordingly, no order extending the time for doing so is required.

Where rent is paid on the first day of the month the effective date of a 1 Month Notice to End Tenancy served mid-month is the last day of the following month. Accordingly, the effective date of this notice to end tenancy, which was served in mid-September, is October 31, 2014.

As explained in the information available from the Residential Tenancy Branch:

“Where a landlord has served the tenant with a One-Month Notice to End Tenancy, and then accepts a rent payment for the month after the tenancy was to end, the landlord should clarify with the tenant whether they have reinstated the tenancy.

When a landlord does not want the tenancy to continue, the landlord should:

1. Specifically tell the tenant that the rental payment is being accepted for the use and occupancy only and does not reinstate the tenancy; and,
2. Tell the tenant that they must move out, as required by the Notice to End Tenancy.”

The landlord accepted the rent on November 1 without making it clear in writing that he was only accepting the payment “for use and occupancy only”. Accordingly, the landlord is deemed to have reinstated the tenancy. For this reason the 1 Month Notice to End Tenancy for Cause dated September 15, 2014, is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.

Even if I had not found that the landlord had reinstated the tenancy I would have set the notice to end tenancy aside. Two or three people in a unit this size is not an unreasonable number of occupants. The issue of a tenant significantly interfering with or unreasonably disturbing other occupants or the landlord usually relates to situations where there is behaviour such as loud parties, threatening behaviour, etc.

The real reason the landlord wishes to end this tenancy is: “Breach of material term of the tenancy agreement that was not corrected within a reasonable period of time after written notice to do so.” If the landlord serves another 1 Month Notice to End Tenancy for Cause based on this reason and it is disputed by the tenant, at the hearing the landlord will have to satisfy the

arbitrator that this is a material term of the agreement, that the tenant was given written notice of the breach, and that the tenant has not remedied the breach within a reasonable period of time.

With regard to any demand for increased rent the parties are advised of the following provisions of the *Residential Tenancy Act*.

- 1) Section 13(2)(f)(iv) states that the tenancy agreement must set out the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies.
- 2) Section 42(1) states that rent may only be increased once in a twelve month period.
- 3) Section 43 states that a landlord may impose a rent increase only up to the amount:
  - a. calculated in accordance with the regulations;
  - b. as ordered by an arbitrator on application by the landlord; or,
  - c. as agreed to by the tenant in writing.

#### Conclusion

The 1 Month Notice to End Tenancy for Cause dated September 15, 2014, is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.

As the tenant was successful on her application she is entitled to reimbursement from the landlord of the fee she paid to file it. Pursuant to section 72 \$50.00 may be deducted from the next rent payment due to the landlord.

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: December 02, 2014

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Residential Tenancy Branch

