



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC FF

### Introduction

This hearing dealt with the tenant's application to cancel a notice to end tenancy for cause. Both the tenant and the landlord participated in the teleconference hearing.

The tenant stated that she only received the landlord's evidence just prior to the hearing, and she had not had sufficient time to submit evidence in response. I informed the landlord that I could either adjourn the hearing to allow the tenant time to respond, or we could proceed but his documentary evidence would not be admitted. The landlord indicated that he wished to proceed with the hearing. Both parties were given full opportunity to give testimony and present their admissible evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Is the notice to end tenancy for cause valid?

### Background and Evidence

The tenancy began on January 21, 2013. The tenant rents the lower suite in a house, and the upper suite is occupied by other tenants.

On October 22, 2014 the landlord and the tenant participated in a teleconference hearing that convened pursuant to the tenant's application to cancel a notice to end tenancy for cause dated August 21, 2014. In that hearing, the arbitrator found that the landlord had reinstated the tenancy by accepting rent for October 2014 without indicating that it was accepted for use and occupancy only. In the decision the arbitrator indicated that the landlord could "no longer use the one month Notice to End Tenancy dated August 21, 2014 to end this tenancy."

Later on the same day as the hearing, October 22, 2014, the landlord served the tenant with a new notice to end tenancy for cause. The new notice indicates the reasons for ending the tenancy as follows:

The tenant or a person permitted on the property by the tenant has:

- (a) significantly interfered with or unreasonably disturbed another occupant or the landlord;
- (b) seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- (c) put the landlord's property at significant risk; and

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.

### *Landlord's Evidence*

The landlord stated that after he served the tenant with notices to end tenancy, she called the landlord and shouted at him.

The landlord described an incident on July 19, 2014, when the tenant's son fired a BB gun at the fence on the rental property, and then fired on the upstairs tenant. The landlord stated that the police attended and the tenant and the upstairs tenant got into a screaming match. The police advised the tenant and the upstairs tenant to deal with the landlord rather than each other. The landlord stated that the tenant believed that this direction was for the upstairs tenant only and did not apply to her.

The landlord described another incident where the upstairs tenant's daughter was sunbathing and the tenant proceeded to mow the lawn around the upstairs tenant's daughter's head. The landlord stated that the upstairs tenant then told the landlord that she felt the tenant was creating an unsafe environment. The landlord also described an incident where the tenant sprayed the upstairs tenant's daughter with the hose.

The landlord stated that on October 19, 2014 he received a photograph of the tenant's son on the ground. The landlord stated that a neighbour told the landlord that the tenant pushed her son to the ground so hard that his shoes were knocked off. The landlord stated that when he asked the tenant about the incident, she replied that "kids tend to exaggerate things."

The landlord stated that neighbours have observed the tenant's son and his friends smoking and drinking in the back and discarding cigarette butts and beer cans over the neighbour's fence.

### *Tenant's Response*

The tenant acknowledged that there have been conversations where everybody was stressed, but she did not think she had "crossed the line" with the landlord.

The tenant stated that there have been communication problems between her and the upstairs tenant because the upstairs tenant is rarely home and the tenant then has to deal with the upstairs tenant's 16-year-old daughter. The tenant stated that she raised several issues with the landlord; however, the landlord did not address those complaints.

The tenant stated that one of those complaints was that the upstairs tenant's daughter sunbathed topless. The tenant stated that one day she asked the upstairs tenant's daughter if she could put her top back on because the tenant's son and his friends were going to arrive, and she also told the daughter that she was going to do some mowing. The daughter refused to leave and said that she was there first, so the tenant proceeded to mow the lawn around the daughter. The tenant denied spraying the hose on the daughter.

The tenant stated that it was false that her son aimed his BB gun at the upstairs tenant. The tenant also stated that the comments about her son smoking and drinking are "absolutely false." The tenant stated that the photograph of her son on the ground is also absolutely false, and the tenant did not say that children exaggerate, she said "perhaps children have temper tantrums."

### Analysis

Upon consideration of the evidence and on a balance of probabilities, I find that the notice to end tenancy for cause is not valid. I find that the landlord failed to provide sufficient evidence to establish cause as alleged on the notice to end tenancy. The landlord merely reported incidents that he did not witness first-hand, and he did not provide direct evidence such as call witnesses or provide witness statements from the upstairs tenant or her daughter. I therefore cancel the notice to end tenancy.

As the tenant's application was successful, she is entitled to recovery of her filing fee for the cost of the application.

Conclusion

The notice to end tenancy for cause is dismissed. The tenancy therefore continues until such time as it ends in compliance with the Act.

The tenant is entitled to recovery of her \$50 filing fee, which she may deduct from her next month's rent.

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 4, 2014

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Residential Tenancy Branch

