



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, RR

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for an order to cancel a One Month Notice to End Tenancy for Cause and to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided limited documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

### Preliminary Issues

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that not all the claims on the tenant's application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenant's application to cancel the One Month Notice to End Tenancy for cause and I will not deal with the remaining sections of the tenant's claim at this hearing.

### Issue(s) to be Decided

Is the tenant entitled to an order to cancel a One Month Notice to End Tenancy for Cause?

Background and Evidence

The parties agreed that this month to month tenancy started on March 01, 2014. Rent for this unit is \$900.00 per month due on the 1<sup>st</sup> day of each month in advance. There are two tenants living in the unit although only one tenant YM has filed this application. This unit is located in a fourplex and the landlord's agent resides in one of the four units with her fiancé.

JL testified that they served the tenants with a One Month Notice to End Tenancy in person on March 30, 2015. This Notice has an effective date of June 01, 2015 and provided the following reasons to end the tenancy:

- 1) *The tenant is repeatedly late paying rent.*
- 2) *The tenant or a person permitted on the residential property by the tenant has*
  - (i) *Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.*

JL testified that the tenants have been repeatedly late paying rent since the start of the tenancy in March, 2014. Over the period of the tenancy the tenants have paid rent on time on only five occasions. The reminder of the months the rent has been paid late. The tenant has often made split payments of rent during a month without permission from the landlord. JL testified that to date all the rent has been paid and there are no arrears.

JL testified that the tenant has caused disturbances in the fourplex which have disturbed other tenants and JL. The tenants have been heard yelling at each other into the night and the downstairs tenant has commented on this to JL. The noise has also woken up JL's son. The tenants have also been banging on the walls. JL called the police but the tenants stopped before the police responded so JL cancelled the call out.

There was more banging again on April 24 and the police were called again and they responded this time. The banging continued again over a period of a few days.

JL testified that YM has acted in a threatening manner towards JL when YM has come to JL's door and asked if JL is done yet. YM proceeded to yell and threaten JL. There was another incident where one of the tenants cut the lock off the shed and put their lock on it. JL's fiancé cut the tenants' lock off and replaced it. YM wanted to get into the shed and yelled and swore at JL's fiancé when he went to the shed to let her get her stuff out.

YM disputed the testimony of JL. YM testified that she has paid rent on the first of the month for September and October, 2014 and April and May, 2015. The tenant testified that JL allowed the tenants to make split payments for the other months. YM testified that she had to demand rent receipts as JL would make excuses for not providing them and has given three months' worth of receipts on one month and the dates on these are wrong.

YM disputed the landlord's claims that they have disturbed other tenants or the landlord. YM testified that the noise comes from JL's unit all night long so the tenants called the police. JL also taunts YM's dog to try to make it bark so she can record it. YM testified that she has not been banging on the walls over several days but agreed she did put a shelf up on one occasion. YM testified that all the tenants had a key to the shed. The other tenant living with YM lost their key so he cut the landlord's lock off. YM bought a new lock and told the other tenant to give a key to JL. JL's fiancé cut that lock off and when YM wanted to get into the shed he stood over her and was argumentative. YM testified that she did not yell at him she just said forget it and she would get her stuff out later.

YM testified that JL was screaming and swearing out of her window at YM after the hearing papers were served. YM spoke to the tenant living downstairs and he said he has not heard anything from YM's unit. Everything said by JL is a lie. YM testified that

JL has put the wrong unit number on the One Month Notice and the Notice has not been signed by the landlord JO.

JO testified that he has a photocopy of the original notice and the unit number is the correct number on there. JO testified that the tenant was given the original Notice. JO testified that JL acts as his agent and has the authority to serve notices on behalf of JO.

JO orally requested that the Notice is upheld and seeks an Order of Possession for the rental unit effective as soon as possible.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

With regard to the tenant's claim that the unit number is not correct on the Notice; I have considered the Notice provided in documentary evidence by the tenant. The unit number has one digit difference in the number provided on the Notice and the actual unit number. I find it would be unreasonable for me to consider the Notice to be invalid due to an error such as this. The landlords testified that on their photocopies of the Notice the number is correct. The landlords have not provided these in documentary evidence. I find any reasonable person would know that this Notice refers to the tenants' rental unit despite the error in the number and therefore will not consider that the Notice is invalid due to this. Furthermore, if the landlord has an agent who acts on his behalf pertaining to the tenancy than that agent is entitled to issue and sign a Notice to End Tenancy.

With regard to the matter of repeatedly late rent payments; I find YM did not dispute that they had paid rent late on more than three occasions. YM testified that they had permission from JL to split the payments but this is not in writing. JL disputed this and testified that rent is due on the first of each month and no permission had been given for the tenants to split the rent payments during a month. I have reviewed the testimony before me and find that rent is due on the first of each month as the tenants have made some payments to indicate that they are aware of this and that there have been more than three late payments of rent since March, 2014. I refer the parties to the Residential Tenancy Policy Guidelines # 28 which states, in part, that three late payments are the minimum number sufficient to justify a notice under these provisions. Without corroborating evidence to show the landlord agreed the tenants could split the rent payments, I find this ground for ending the tenancy is upheld.

With regard to the ground given that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. In the absence of any corroborating evidence to support this reason provided on the Notice I am not satisfied that the landlord has provided sufficient evidence to show that grounds exist to end the tenancy under this ground. I find it is one person's word against that of the other and therefore the burden of proof has not been met.

As the landlord has shown that the tenants have been repeatedly late paying rent I find the tenant's application to cancel the Notice is dismissed.

I refer the parties to s. 55(1) of the *Residential Tenancy Act (Act)* which states:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession, and*

*(b) the director dismisses the tenant's application or upholds the landlord's notice.*

The landlord has orally requested an Order of Possession. Having upheld the Notice to End Tenancy I will grant that Order. The effective date on the Notice to End Tenancy in this matter was April 30, 2015. As the tenants have paid rent until the end of May, 2015, I grant the landlord an Order of Possession effective May 31, 2015.

#### Conclusion

I HEREBY dismiss the tenant's application in its entirety.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on May 31, 2015. This Order must be served on the tenant, if the tenant fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

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: May 21, 2015

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Residential Tenancy Branch

