



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Codes: CNC, ERP, RP, PSF

### Introduction

The tenant has applied for dispute resolution of a dispute in the tenancy at the above address and requests the following orders: to set aside a Notice of End a Residential Tenancy dated March 30, 2015 and setting the end of tenancy for April 30, 2015, an order to provide services, and make repairs. The landlord attended and the tenant's advocate. The tenant was in the hospital but his advocate consented to the hearing proceeding to deal with the issue of the Notice to End the Tenancy.

### Preliminary Matter:

The tenant indicated several matters of dispute on his application and his advocate submitted that the tenant was in the hospital and that the main issue to deal with during this proceeding is the Notice to End Tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. Therefore, pursuant to Rule 2.3 of the Rules of Procedure I will deal with the tenant's request to set aside or cancel the Notice to End Tenancy for Cause and I dismiss the balance of the tenant's claim with liberty to re-apply.

### Issue(s) to be Decided

Is the Notice to End the Tenancy valid?

### Background and Evidence

The landlord admitted service of the Application for Dispute Resolution. The landlord testified that he served the Notice to End the Tenancy for Cause on March 30, 2015 by handing it to the tenant. The landlord relied upon the ground that the tenant had allowed an unreasonable number of occupants in the unit. He testified that there was a clause in his tenancy agreement which stated that "visitors were only permitted between 10 AM

and 8:00PM.” He testified that the tenant often had a girlfriend over night two to three nights within two weeks. He also testified that the tenant often put garbage on his front door.

Three witnesses testified for the landlord that the tenant had several women visit him many nights a week. One witness thought some of the women were prostitutes and others drug dealers. One witness testified that the tenant assaulted him with a crowbar.

### Analysis

The Notice to End a Residential Tenancy relies only on section 47(1)(c) of the Residential Tenancy Act. That section provides as follows:

#### **Landlord's notice: cause**

**47** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(c) there are an unreasonable number of occupants in a rental unit;

There is a difference between visitors and occupants. Occupant is not defined in the Act but Policy Guideline 13 defines occupants as:

### **Occupants**

Where a tenant allows a person who is not a tenant **to move into the premises and share the rent**, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

I find that pursuant to the Policy Guideline aforementioned, that an occupant is someone who moved into the unit and shares the rent. In this hearing notwithstanding the prohibition in the tenancy agreement and the evidence adduced by the landlord and his witnesses, I find that the landlord has not proven that the tenant has brought any “occupants” into the unit. While the tenant and or his visitors may have caused disturbances the landlord only relied upon the ground that the tenant had allowed an “unreasonable number of occupants in the unit” when he issued his Notice to End the Tenancy dated March 30, 2015.

It is the landlord who has the burden of proof on the balance of probabilities to establish cause. This onus must be satisfied strictly where the landlord seeks to end a tenancy. In this matter I found that the landlord has not proven that the tenant has allowed an unreasonable number of occupants in his unit. I therefore find that the landlord has failed to prove cause on the balance of probabilities. The tenant’s application to cancel the Notice to End the Tenancy application is successful.

Conclusion

I have cancelled the Notice of End a Residential Tenancy dated March 30, 2015 and setting the end of tenancy for April 30, 2015. I Order that the tenancy is confirmed and shall continue. I have dismissed all of the tenant's other applications with leave to reapply.

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 19, 2015

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Residential Tenancy Branch

