



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a One Month Notice to End Tenancy for Cause.

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

### Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the Notice to End Tenancy?

### Background and Evidence

The parties agreed that this month to month tenancy started on May 01, 2008. The tenant testified that rent for this unit is \$1,140.00 per month; the landlord testified that the tenant was sent a rent increase effective on August 01, 2015 that increased the rent to \$1,168.50 a month. The landlord did not provide a copy of the rent increase notice in documentary evidence. Rent is due on the 1<sup>st</sup> of each month in advance.

The landlord testified that the tenant was served a One Month Notice to End Tenancy for Cause (the Notice) on June 15, 2015. This Notice has an effective date of July 31, 2015 and provides the following reasons to end the tenancy:

- 1) The tenant has allowed an unreasonable number of occupants in the unit*
- 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,*
  - (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,*
- 3) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*
  - (ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
  - (iii) Jeopardized a lawful right or interest of another occupant or the landlord*

The landlord testified that the tenant had been running an illegal, unlicensed daycare from her unit for two years. The landlord's insurance does not allow a business to be operated on the premises particularly with children. This means there has been an unreasonable number of occupants in the unit; it also means lots more traffic with parents coming to pick up their children. The tenant was asked to stop this daycare and was given breach letters concerning the daycare. The landlord understands the tenant has now stopped running the daycare from her unit.

The landlord testified that the tenant has significantly disturbed other occupants and the landlord. The landlord referred to three compliant letters from other tenants. One of

these letters is unsigned by the sender. The letters refer to the tenant yelling and shouting at another tenant who was leaving her unit with her children, one dealing with complaints about the tenant yelling at an old woman collecting recycling from the garbage bins outside the building and the tenant taking other tenants' clothes out of the washing machines and threatening other tenants and the anonymous letter referred to the tenant yelling and threatening other tenants using the laundry room and taking other tenants' clothes out of the washer dryer while in use, because the tenant says she does not have time to wait for the machines to finish.

The landlord testified that she has received other complaints from other tenants but they are reluctant to put things in writing. The landlord testified that the tenant has been abusive and threatening towards the landlord and calls the landlord names such as liar and cheat. The landlord finds this behaviour disturbing and has started to get her assistants to handle any issues with the tenant as the landlord has been undergoing chemotherapy for the last two years. The landlord testified that she cannot tolerate this continued harassment from the tenant. The tenant gossips and fights with other tenants, the tenant also fought and harassed some workers who were installing new windows.

The landlord testified that on one occasion in 2010 the tenant was in the laundry room and when the landlord asked the tenant not overload the machines the tenant started to scream at the landlord and followed the landlord back to the landlord's office screaming and calling the landlord a cheat and a liar. The landlord testified that this abusive behaviour affects the landlord both physically and physiologically. The landlord requested that the Notice is upheld and orally asked for an Order of Possession at the hearing. The landlord testified that she is willing to extend the date of the Notice to September 30, 2015 to give the tenant time to find alternative housing.

The tenant testified that she was not running a daycare from her unit. The tenant testified that she is an early year's teacher and has worked full time up to five years ago. The tenant testified that she is just about to publish her first children's book and children have attended at her unit who are either family members or children of friends.

Her book contains some art work done by these children. The tenant also takes the children out to the park. The tenant testified that the landlord started to accuse the tenant of running a daycare from her unit; however, the tenant has not done so, no money was paid to care for children and at the time the landlord made these accusations the tenant was working as a substitute teacher.

The tenant disputed the letters provided by other tenants in the landlord's evidence. The tenant testified she has no idea about the comments made in the anonymous letter. One incident occurred when a neighbour's children were yelling all the time; when the neighbour was going out with her children the tenant approached her and offered to help as she is a daycare teacher. The neighbour said her children were not yelling and this went back and forth between them. The tenant went into her unit and this neighbour came and knocked on the tenant's door and said the tenant had scared her children and threatened to tell the landlord. The neighbour was angry and was yelling at the tenant. The tenant told her to tell the landlord and then proceeded to shut her door. The tenant testified that the landlord has a security camera in the laundry room, lobby and hallways and could provide evidence if the tenant has disturbed other tenants. The tenant testified that later on she saw her neighbour in the laundry room and apologized to her for what had transpired between them.

The tenant disputed the complaint made by another tenant. The tenant testified that this tenant is a person with special needs and the landlord must have gotten them to write the letter. The incident happened because the previous landlord had asked the older lady collecting stuff from the garbage bins not to be on the property. This person was very noisy and woke the tenant up early in the morning. The tenant testified that she called to her from her window to move on and the other tenant overheard this exchange, got mad at the tenant and said the tenant was being mean to the lady.

The tenant testified that it is common practise for tenants to take each other's laundry out of machines when it is finished. On one occasion another tenant came into the room and got angry at the tenant. The caretaker had asked the tenant a few days earlier to

leave other tenants' washing alone. The tenant testified that if this is now to be the common practise then the tenant seeks to have the same respect shown to her laundry and not have other tenants remove it from machines. The tenant testified when the landlord approached the tenant about taking washing from a machine it was actually the tenant' owns washing and the landlord would not listen to the tenant when the tenant tried to explain this. The tenant testified that due to the landlord's behaviour the tenant will not met with the landlord unless she has a witness present. The tenant has also started to tape conversations between her and the landlord.

The tenant disputed that she yells at people and testified that when the windows were being done the tenant was not around. The tenant denies that she has ever called the landlord a liar or a cheat. The tenant testified that she has not harassed the landlord's assistant and when the landlord said she had, the tenant spoke to the landlord's assistant who confirmed to the tenant that she had not been harassed.

The tenant testified that they have had two previous hearings one in April, 2010 and one in March this year. These dealt with the tenant's applications to dispute a One Month Notice and to cancel a 10 Day Notice for unpaid rent. The tenant testified that she was successful in having the Notices cancelled and referred to the file numbers for both previous applications as listed on the front page of this decision. The tenant believes the landlord wants to evict the tenant by whatever means possible.

The landlord testified that the security cameras are placed in the laundry room and lobby not in the hallway and are only a year old. The incident between the tenant and landlord occurred five years ago. There was a hearing held on April 28, 2010 concerning a previous One Month notice to End Tenancy which was overturned at the hearing.

The landlord testified that when the tenant was running a daycare it was fathers picking up their children and the landlord does not believe it was family and friends of the tenants.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. During the hearing the parties demonstrated an acrimonious relationship and clearly the landlord/tenant relationship has broken down over the last five years; however, when making my decision in this matter I must determine if the Notice was issued because of the acrimonious relationship or if the reasons given on the Notice are valid and supportable.

The landlord has the burden of proof in this matter to show that the reasons given on the notice are legitimate reason to end the tenancy. The landlord has provided numerous caution notices, incident reports and a breach letter; however, some are dated earlier on in the tenancy and some dated in 2015. One incident report dated July 07, 2015 details that the tenant is being difficult concerning a problem with bees. The other incident report issued on January 01, 2015 is, in my view, unprofessional and states that the tenant is argumentative, the tenant gossips and says nasty things about the landlord regarding the landlord being a liar and a cheat. Other tenants do not like the tenant and asks the tenant to move if she is unhappy. This is not what an incident report is designed for it; should be used when there has been an incident that needs to be recorded, not as a memo between the parties.

A Caution Notice issued on June 01, 2015 speaks about the tenant complaining about bees on her balcony and then not given the landlord permission to enter to deal with the bees and that the tenant is constantly harassing the landlord's assistant. It would have been more appropriate for the landlord to deal with this in a letter to the tenant or the issuance of a Notice to Entry to the tenant's unit. Once a Notice has been given the landlord does not need the tenant's permission to enter the unit and could enter to deal with a bee issue without the tenants permission or presence. I find issuing a Caution Notice concerning this matter is unnecessary. The Caution Notice issued on June 15, 2015 concerns comments made by the tenant that the landlord construed to be abusive

when the tenant was passing the landlord's office. Another Caution Notice was issued on April 30, 2015 concerning any complaints for the tenant to come to the office and not to other tenants.

The landlord must show that the tenant has significantly interfered with other tenants or the landlord or has seriously jeopardized the health, safety or lawful right of other tenants or the landlord. The tenant has presented an equally possible explanation of events that other tenants have complained about and disputed that she has harassed or significantly disturbed the landlord. Even though the tenant agreed she had removed other tenants' washing from machines in the laundry room if this has been the common practise among some tenants it would not be sufficient cause to end a tenancy.

Having considered the testimony and documentary evidence presented I am not satisfied the landlord has sufficient cause to end the tenancy based on the reasons given on the One Month Notice. The landlord has insufficient corroborating evidence to show the tenant was running a daycare in her unit or that this was an illegal activity. Overall I find the landlord has insufficient corroborating evidence to end the tenancy. I agree the relationship between the parties has broken down; however, that is not sufficient reason to end the tenancy.

I do; however, caution both parties to conduct themselves in a reasonable and respectful manner when dealing with the other party. Many of these incidents could have been amicable resolved between them. If the parties feel they are unable to communicate in a civil and respectful manner then they should use a third party to assist them in resolving minor incidents that occur. The tenant is cautioned to ensure she conducts herself in a manner that will not jeopardize her tenancy in the future. The landlord is at liberty to serve the tenant with another One Month Notice if any significant incidents occur involving the tenant.

### Conclusion

The tenant's application is allowed. The One Month Notice to End Tenancy for Cause dated June 15, 2015 is cancelled and the tenancy will continue.

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: August 17, 2015

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Residential Tenancy Branch



