



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a one month notice to end tenancy for cause (the "Notice"). Both parties participated in the conference call hearing.

### Issue to be Decided

Should the Notice be set aside?

### Background and Evidence

The parties agreed that the tenancy began on May 1, 2015 and that the rental unit is located on the bottom floor of a residence in which the landlord occupies the upper floor. On July 3, the landlord served the Notice on the tenant. The Notice alleges the following:

- The tenant has an unreasonable number of occupants in the rental unit;
- The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- The tenant has seriously jeopardized the health, safety or lawful right of another occupant or the landlord;
- The tenant has engaged in illegal activity that has or is likely to:
  - Damage the landlord's property;
  - Affect quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
  - Jeopardized the lawful right or interest of another occupant or the landlord.

The landlord testified that his primary concerns are centred around an incident which took place over the course of July 2-3. The landlord testified that at approximately 1:30

a.m. on July 2, he returned home and detected the smell of smoke and marijuana in his bedroom, which is immediately above the tenant's bedroom. He stated that he had also heard noise from the unit, so he went to the rental unit and confronted the tenant, who allowed him to enter the unit. He did not observe anyone smoking or see any ashtrays, but told the tenant and her guests that he had smelled smoke and told her it had to stop. He testified that the incident was repeated the following night when he again smelled these odours. He further testified that on July 4, the day after he served the Notice, the tenant's guest swore at him.

The tenant denied that she and her guests had smoked any type of substance in the rental unit. She testified that she smokes cigarettes, but does not do so anywhere on the residential property. The tenant theorized that either the odour of marijuana may have been clinging to one of her guests, who holds a license to use medical marijuana or that the landlord was smelling odours from people who live across the street. The tenant acknowledged that her guest confronted the landlord, but stated that he did so because the landlord had treated her disrespectfully. The tenant stated that she did not believe she was responsible for the actions of her guests.

With respect to the allegation that the tenant had an unreasonable number of occupants in the rental unit, the parties agreed that the tenant and her daughter live in the one bedroom rental unit and that on the days in question, the tenant had 2 guests staying with her from out of town and another 2 guests who were visiting for the evening. They agreed that the guests were only in the rental unit for a number of days and had not set up household there.

### Analysis

The landlord bears the burden of proving on the balance of probabilities that he has grounds to end this tenancy. I find that the landlord has not proven that the tenant had an unreasonable number of occupants in the rental unit. The Act does not prohibit the tenant from having guests and it is clear from the parties' testimony that the guests were only staying in the unit for several nights. I find that the Act intends to prohibit not guests, but an excessive number of full time, permanent or long-term occupants. I find that the landlord has not established this ground to end the tenancy.

The remaining grounds are all related to the incidents which took place from July 2-3. Although the landlord complained of the actions of the tenant's guest on July 4, this could not have formed the basis for the Notice as the Notice was served on the tenant the day before the altercation with the guest occurred. I therefore have not considered that behaviour in my deliberations. However, I note that the tenant is indeed

responsible for the actions of her guests and should be aware that their behaviour could give the landlord grounds to end the tenancy.

The landlord has a strong belief that the tenant and/or her guests were using marijuana and smoking cigarettes in the rental unit, but did not observe them doing so and did not observe ashtrays in the unit. The tenant denies that they were smoking and in the absence of evidence to corroborate the landlord's belief, I find that the landlord has not proven that he has grounds to end the tenancy. The unit is a non-smoking unit and had the landlord proven that this activity was taking place, this could have provided grounds to end the tenancy. The evidence in this case is insufficient to meet the landlord's burden of proof.

I find that the landlord has not proven that he has grounds to end the tenancy and I therefore order that the Notice be set aside and of no force or effect. As a result, the tenancy will continue.

#### Conclusion

The Notice is set aside 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: September 14, 2015

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Residential Tenancy Branch

