



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on July 17, 2015. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

### Background and Evidence

This tenancy started on April 1, 2015 as a verbal month to month tenancy. Rent is \$700.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$350.00 on March 15, 2015.

The Landlord said they served the Tenant with a 1 Month Notice to End Tenancy for Cause dated June 30, 2015 by personal delivery to an adult living in the rental unit on June 30, 2015. The Effective Vacancy Date on the Notice is July 31, 2015. The Tenant is living in the unit and the Landlord said she wants to end the tenancy.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenant has been repeatedly late with rent payments and the Tenant has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The Landlord said there were number of incidents that lead to the issuing of the 1 Month Notice to End Tenancy and they are as follows:

- 1). The Landlord said they received complaints that the Tenant was not parking in the correct parking stall and that the Landlord's would be fined by the Strata Counsel if the Tenant continued to park in the visitor parking.
- 2). The Landlord said they received complaints that the Tenant was accessing her rental unit by climbing over the balcony rail which contravenes the Strata rules.
- 3). The Landlord said they received complaints that the Tenant had a party on June 20, 2015 and the party caused a noise complaint by another occupant of the Strata.
- 4). The Landlord continued to say there were a number of additional complaints to them about the Tenant by phone email and text which has created a difficult situation for the Landlord. The Landlord said they did not provide copies of any of the complaints they received to the hearing. The Landlord said if the Strata start to send fines to the Landlord they will have to forward the fines to the Tenant.
- 5). The Landlord said the Tenant was late a couple of days with the rent for May and June, 2015 and the Tenant started the rent payment by e-transfer in July, 2015. The Landlord said the e-transfer was sent on the first but the funds did not actually transfer until two days later. The Landlord said the rent payment for August, September and October, 2015 have been on time.

The Tenant said the Landlord's claims are not completely correct. The Tenant said there has been poor communications in this tenancy as the Landlord did not complete a tenancy agreement nor a move in condition inspection report and the Landlord did not go through the Strata rules with the Tenant at the start of the tenancy. The Tenant continued to say that as a result she was not aware of the Strata rules so when she violated the rules she did not know, but once she knew the Strata rules she has complied. The Tenant made the following statements regarding each of the points the Landlord made:

- 1). With regard to the parking the Tenant said she was told by her roommate that she could park in the visitor parking on occasion. Once the Strata told her she could not use the visitor parking she now parks across the street.
- 2). The Tenant said she stopped climbing over the balcony to enter her unit when she was told that the Strata did not allow this. The Tenant said she had no issue with this she just did not know prior to being told the rules.
- 3). The Tenant said she is normally quiet but she has had 2 parties at her unit and she believes this is normal and they did nothing wrong.

4). The Tenant said if the Landlord had provide her with a set of Strata rules and went over them with her at the start of the tenancy these issues would not have happened. The Tenant said she has dealt with the Strata directly to correct all the issues that she was involved with.

The Landlord said they have received additional complaints up to July 31, 2015 about the Tenant.

5). The Tenant said she was late for the May and June rent as the Landlord was picking the rent up at the unit and they had not worked out how that would work so the Tenant started making the rent payment by e-transfer and the rent has been paid on time for July, August, September and October, 2015. The Tenant added that the Landlord may have received the July rent payment a couple of days after it was sent because the Landlord was not experienced in e-transfers, but it was sent on July 1, 2015. The Tenant said she is not late with her rent payments.

The Tenant said she has not received any warning letters or complaint notes from the Landlord and only one notice from the Strata which was a warning about parking in the visitor parking area which she has corrected. The Tenant said the Landlord is not justified in giving her a Notice to End Tenancy for Cause as she has corrected any mistakes she made as a result of not being told the rules of the tenancy.

The Landlord said there have been constant complaints by email and text about the Tenant's behaviour, but they are new landlords and new to this process so they did not send any evidence to support their claims into the Residential Tenancy Branch. The Landlord said this is a difficult situation and the Tenant's behaviour and actions have resulted in the Notice to End Tenancy dated June 30, 2015. The Landlord said they want to end the tenancy.

The Tenant said in closing that she is will to move but not at this time so she will try to find a new rental unit but for now she is requesting the Notice to End Tenancy for Cause to be cancelled as the Landlord has not met her responsibilities and obligations as landlord and the Tenant corrected any issues that have arisen with the Strata.

The Landlord said in closing that there have been numerous complaints about the Tenant and issues with the Tenant since the start of the tenancy and now the Landlord want to end the tenancy.

### Analysis

It is apparent from the testimony and evidence that there are issues between the Tenant and the Landlord. The Landlord said the Tenant is not following the Strata rules and therefore is disturbing other occupants and has created issues for the Landlord with the Strata; therefore the Landlord wants to end the tenancy. As well the Landlord said the rent was late in May and June, 2015 and they are not sure what happened in July,

2015. The Tenant says the Landlord has not communicated with her about the tenancy as there is no written tenancy agreement, no move in condition inspection report and the Landlord did not go over the Strata rules with the Tenant at the beginning of the tenancy. As a result the Tenant said she was unaware of breaking the rules until she was told by the Strata. The Tenant said she has complied with the Strata rules as soon as she became aware of them. As well the Tenant said the rent was 2 days late in May and June, 2015 because the Landlord came to pick it up and they did not connect so the rent was late. The Tenant said she corrected this issue by paying the rent by e-transfer and she made the transfers on time for July, August, September and October, 2015.

In any tenancy confusion is mostly removed by good communication between the Landlord and the Tenant. In this situation the Landlord has not met her responsibilities and obligations to the Tenant because no tenancy agreement was completed, no move in condition inspection report was completed and the strata rules were not communicated to the Tenant on move in. These responsibilities are the Landlord's and are done to help prevent disputes between the parties. I accept the Tenant's testimony that she was unaware of the Strata rules and therefore when she parked in the visitor parking and climbed over the balcony rail she was not aware that she had done anything wrong. As well I accept that the Tenant corrected her actions once she was told the rules.

In addition the Landlord did not give the Tenant any written warnings about her behaviour and actions therefore the Landlord did not communicate there was a problem in the tenancy. A 1 Month Notice to End Tenancy for cause is normally a result of up to three warning letters unless something happens that is so serious that life or property is at risk. Inconveniences and disturbances can be annoying but these things happen in tenancies and in life and are not grounds for an eviction.

Section 47 (d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant, or put the landlord's property at **significant** risk.

In this case it is my finding that the reasons given for ending the tenancy have not reached the level of **unreasonableness, significance or seriousness** required by section 47 of the Residential Tenancy Act. I find in favour of the Tenant that the reason of adversely affecting the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord has not reached the level to be successful in ending a tenancy.

With regard to the late rent payment I accept the Tenant has paid the rent late on two occasions and the third occasion (July, 2015) it is unclear if the transaction was submitted on the July 1, 2015 or not. There was no evidence provided. Consequently

pursuant to policy guideline 38 which states a tenant must be late on three or more occasion to justify an end of tenancy; I accept the Tenant has established grounds to cancel the Notice to End Tenancy because of late rent payments.

I find for the Tenant and I order the One Month Notice to End Tenancy for Cause dated June 30, 2015 to be cancelled and the tenancy will continued as originally agreed to.

As the Tenant has been successful in this matter I order the Tenant to recover the \$50.00 filing fee for this proceeding by deducting it from the November or December, 2015 rent depending when the parties receive this decision. The November or December rent is adjusted to \$650.00.

### Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated June 30, 2015 is cancelled and the tenancy is ordered to continue as set out in the verbal tenancy agreement.

The November or December, 2015 rent payment is adjusted to \$650.00 so that the Tenant can recover the filing fee of \$50.00 from the Landlord.

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 22, 2015

---

Residential Tenancy Branch

