



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was sufficiently served on the tenant by posting on July 12, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on July 23, 2015. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated July 7, 2015?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenant moved into the rental unit on November 1, 2012 after she entered into a tenancy agreement with the previous owner. The parties produced a one year written

tenancy agreement between the landlord and the tenant that provided that the tenancy started on May 1, 2015. The rent was \$1500 per month payable in advance on the first day of each month. The written tenancy agreement indicates that a security deposit of \$750 has been paid.

The landlord seeks to end the tenancy based on the following grounds:

Grounds for Termination:

The Notice to End Tenancy relies on section 47(1)(c) and (d) of the Residential Tenancy Act. Those sections provide 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;

(d) 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,

...

(iii) put the landlord's property at significant risk;

Preliminary Ruling:

The agents for landlord attempted to introduce evidence relating to matters that took place after the date of the Notice. The Notice to End Tenancy is dated July 7, 2015. An arbitrator in proceedings such as this is being asked to determine whether the landlord has sufficient grounds to end the tenancy in accordance with the grounds set out in the Notice to End Tenancy as of the date of the Notice. I ruled the evidence of the landlord dealing with conduct and events that occurred after the date of the Notice was inadmissible in this hearing.

Briefly, the evidence presented by the agents for the landlord in seeking to end the tenancy is as follows:

- Starting around the middle of June to July 7, 2015 (the date of the Notice to End Tenancy) the tenant had an unreasonable number of guests staying with her. RX testified the landlord told her there was at least 4 groups of people with up to 6 people in the group.
- The tenant was using her rental unit as an Air B & B which voids the insurance.
- One of the guests broke into the garage owned and used by the landlord when they opened the garage without permission.
- The landlord feels extremely unsafe.
- One of the tenant's guests took photographs of the rental property.
- The friends failed to sort the garbage and the landlord had to do that for them.
- The tenant gave out the code which would allow the guest access to the tenant's rental unit.

The landlord does not speak English and he did not attend the hearing. He also did not provide an affidavit and the evidence of the landlord is hearsay evidence through his agents.

The tenant disputes much of the landlord's evidence and gave the following testimony:

- She has lived in the rental property for approximately 3 years without any problems.
- The tenant acknowledged that she had a number of guests visiting her for the period June to and including August 7, 2015. She testified that the guests were all family and friends and they commonly visit each other during the summer. The last guest she has had left on August 7, 2015. Since that time she has lived in the rental unit on her own.
- None of the guests who visited her stayed longer than a week. Most left after a visit of 2 or 3 days. The largest number of overnight guests was 4. All of the guests have permanent addresses elsewhere.

- The rental unit in question is a 2 bedroom lane house of approximately 850 square feet. The landlord has rented another rental unit in his basement of similar size to a group of 4 people.
- None of her guests broke into the landlord's garage. The garage is attached to the tenant's lane house. On one occasion, the garage door was open and one of her guests parked there thinking it was the tenant's garage. The guest was told by the landlord's wife and she immediately apologized and parked on the street.
- It is not uncommon for her guests to take photographs of where she is living. There is nothing wrong with this.
- She has not used the rental unit as an Air B & B.
- She acknowledged giving her Code to her front door to her guests. However, the lane house is a separate standing building, The code gave the guests access to her rental unit only. It did not put the landlord's living accommodation at risk.

#### Analysis:

After carefully considering all of the evidence I determined the landlord has failed to establish sufficient cause to the end the tenancy for the following reasons:

- The word occupant is not defined in the Residential Tenancy Act. However, the Meriam Webster on-line dictionary defines an "occupant" as a person who is using or living in a particular building, apartment, or room. The Random House Dictionary 1<sup>st</sup> edition defines an occupant "1. A person who or family, group, or organization that lives in or taking up quarters..." In my view a guest who has a permanent address elsewhere cannot be considered to be an occupant of this rental unit merely because he/she is an overnight guest for a few days up to a week. Further, I determined the landlord failed to prove that the guests staying with the tenant for a 7 week period amount to an unreasonable number. It is worth noting the landlord has rented a similar size rental unit to a group of 4 tenants who live there on a permanent basis.
- The landlord failed to prove the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. I determined that

many of the allegations made by the landlord have been exaggerated and are not supported by the evidence. I find the tenant has not used the rental unit as a Air B & B. I further determined that tenant's guest did not break into the landlord's garage. She made a mistake (thinking it was the tenant's) in driving into the garage but immediately left when the landlord's wife advised her otherwise. This is not a significant interference. There is no evidence that the landlord's insurance has been put at risk.

- The landlord's agent complained the tenant did not advise the landlord of what was happening. There is a polite 3 page letter written by the tenant to the agent dated June 24, 2015 advising the landlord that she would be having a number of guests over a short period of time.
- The agent for the tenant complained that the tenant had given her Code to get into her unit to her guests. The tenant's rental unit is separate from the landlord and the giving out of the code did not put the landlord at risk.
- The testimony of a break-in in Richmond is not relevant to this situation.
- There is no evidence of significant interference in the form of noise problems.
- The failure of a guest to place a piece of garbage in the right bin is not a significant interference.
- I do not accept the submissions of the landlord the tenant has put the landlord's property at significant risk.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord failed to establish sufficient cause to end the tenancy. **As a result I granted the tenant's application and I ordered that Notice to End Tenancy dated July 7, 2015 be cancelled.** The tenancy shall continue with the rights and obligations of the parties remaining unchanged. As the tenant has been successful with this application **I order**

**that the landlord pay to the tenant the sum of \$50 for the cost of the filing fee such sum may be deducted from future rent.**

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

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Residential Tenancy Branch

