



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

LANDLORD: OPC  
TENANTS: CNC, FF

### **Introduction**

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking to end the tenancy and has requested an Order of Possession.

The Tenants filed seeking an Order to cancel the Notice to End Tenancy and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on November 9, 2015, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on November 4, 2015, in accordance with section 89 of the Act.

Both parties confirmed receiving the other parties Hearing Packages.

### **Issues to be Decided**

Landlord:

1. Is the Landlord entitled to end the tenancy?

Tenant:

1. Are the Tenants entitled to an order to cancel the Notice to End Tenancy that has been served on them?

### Background and Evidence

The tenancy started on July 15, 2014 as a fixed term tenancy for one year with an expiry date of July 15, 2015. The tenancy continued on a month to month basis after July 15, 2015. Rent is \$1,050.00 per month payable in advance of the 15th day of each month. The Tenant paid a security deposit of \$525.00 on July 15, 2015. No condition inspection reports were completed for this tenancy.

The Landlord said he issued the Notice to End Tenancy for Cause dated October 15, 2015 to the Tenants by posting it on the rental unit door on October 15, 2015. The Landlord said the reasons on the Notice to End Tenancy are Tenants have an unreasonable number of occupants in the rental unit and the Tenant has engaged in illegal activities that have caused or is likely to cause damage to the rental unit.

The Landlord continued to say that the Tenants were approved for 4 occupants and there was agreement between the Landlord and the Tenant that the Tenant's older children could come to visit but could not move into the unit. The Tenancy Agreement Addendum also says additional occupants could occupy the unit with the approval of the Landlord and for an additional charge of \$200.00 per month. The Landlord said he believes the Tenant's daughter was living in the unit for a period of time which the Landlord was unsure of, but he believed to be up to two months. The Landlord's wife said she thought the Tenant's daughter was living in the unit during July and August, 2015. The Landlord said the Tenant's daughter was not approved to be an occupant of the unit.

Further the Landlord said they were advised by the Gas Company that the gas consumption for the rental unit increased drastically in the month of August, 2015 and the Landlord should look into it. The Landlord said they inspected the rental unit and found the thermostat was turned up to 27 degrees Celsius. The Landlord said they believe that running the furnace at this temperature could put the house at risk of burning down or it could damage the furnace.

For these reasons the Landlord said they want to end the tenancy.

The Tenant said the Landlord and he agreed that his older children could come and visit. The Tenant continued to say that his daughter was visiting from Africa for approximately 2 months. The Tenant said his daughter left at the end of August, 2015 and is now back in back in Africa. The Tenant said his daughter was not moving back to Canada, she was just visiting and one additional person in the rental unit was not unreasonable. The Tenant said this was in keeping with the agreement with the Landlord that the Tenant's older children could visit and stay in the rental unit. The Tenant said this was part of their agreement and therefore it is not a valid reason for a Notice to End the Tenancy. The Tenant said at this time only his wife and two younger children are living in the unit as he is away working.

The Tenant continued to say that the thermostat was not working correctly in August, 2015 and that is why the temperature was indicating 27 degrees Celsius. The Tenant said the issue has been corrected. The Landlord was asked what the gas consumption has been for September, October, November and December, 2015. The Landlord said the gas consumption has been normal for those months. The Tenant said they have not damaged the rental unit and they are not doing anything that is illegal.

The Tenant said in closing that the Landlord wants to sell the rental unit and that is why he issued the Notice to End Tenancy so he could get the Tenants out of the unit. The Tenant said this is not right and he requested the Notice to End Tenancy for Cause to be cancelled.

The Landlord said in closing that he does want to sell the rental unit as he has tried to enter the unit with a realtor for an evaluation but the Tenant was aggressive towards the Landlord's wife and now they 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 has allowed an unreasonable number of occupants in the unit and the Tenant is engaged in illegal activities that have or may damage the rental unit. The Tenant says there was an agreement with the Landlord for the Tenant's older children to visit and that is what happened. As well the gas consumption issue was because of the thermostat not working correctly and that issue has been resolved.

From the testimony of both parties I find the facts of the situation are not in dispute. The Tenant's daughter did live in the unit for approximately two months while visiting Canada and the gas consumption was high in August, 2015. As well both the Landlord and the Tenant agree these situations have been resolved as the Tenant's daughter has moved back to Africa and the thermostat has been corrected so gas consumption is normal again. Consequently, I find that the Landlord has not established grounds that prove the Tenant has violated the tenancy agreement. I accept the Landlord and Tenant had an agreement that said the Tenant's older children could stay in the unit while visiting. Both parties agree the Tenant's daughter was visiting so I find the agreement was adhered to by the Tenant. The Tenant's daughter was a visitor not an occupant. As well the agreement for the Tenant's older children to visit had no time limits. Normally a person staying in a rental unit is considered a visitor if the stay is under 1 month and could be considered an occupant if the stay is over one month. In this situation I understand the Landlord's position but the agreement with the Tenant to allow his older children to visit with no time limits takes precedent. Consequently I dismiss the Landlord's claim that the tenancy should end because of an unreasonable number of occupants in the rental unit.

Further the Landlord's reason that the Tenant was engaged in illegal activities that have caused or could cause damage to the unit is the second reason for the Notice to End

Tenancy. I accept the Tenant's testimony that the thermostat was not working correctly and that is why the gas consumption was increased in August, 2015. As well I accept the testimony of both the Landlord and the Tenant that the gas consumption has been normal for September through December, 2015; therefore I find the Landlord has not established grounds to prove the Tenant has been engaged in an illegal activity that may damage the rental unit. I dismiss the Landlord's claim that the tenancy should end because of illegal activity or damage to the rental unit.

In summary I cancel the Notice to End Tenancy for Cause dated October 15, 2015 and I order the tenancy to continue as agreed to in the verbal month to month tenancy agreement which resulted at the end of the fixed term tenancy agreement.

The Landlord's application is dismissed without leave to reapply.

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 February, 2015 rent. The February, 2015 rent is adjusted to \$1,000.00.

#### Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated October 15, 2015 is cancelled and the tenancy is ordered to continue as agreed.

I order the Tenant to adjust their February, 2015 rent to \$1,000.00 in order for the Tenant to recover the filing fee of \$50.00 for this proceeding.

The Landlord's application is dismissed without 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: January 06, 2016

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Residential Tenancy Branch

