



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNL, OLC, LRE

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order to cancel a One Month Notice to End Tenancy for Cause, to cancel a Two Month Notice to End Tenancy for Landlords Use of the Property, for an Order for the landlord to comply with the *Residential Tenancy Act (the Act)*, regulation or tenancy agreement and for an Order to suspend or set conditions on the landlords' right to enter the rental unit.

The tenant and the landlord (RD) attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence.

*Procedural issues-* the landlord's evidence was sent late, I have; however, accepted this evidence as the tenant has had sight of the evidence prior to the hearing and I do not feel that by allowing this evidence it will prejudice the tenant. The tenant did not serve the landlord copies of the hearing documents as required under s. 89 of the *Act*; however, pursuant to s. 71 of the *Act* I order that these documents not served in accordance with section 88 or 89 are sufficiently served for purposes of this *Act*.

### Preliminary Issues

I have determined that the portion of the tenant's application dealing with any claim other than the request seeking cancellation of the One Month Notice to End Tenancy and the Two Month Notice to End Tenancy are unrelated to the primary issue of disputing the Notices. As a result, pursuant to section 2.3 of the Rules of Procedure, I have severed the tenant's application and dismissed those portions of the tenant's application for an Order for the landlord to comply with the *Act* and to suspend or set conditions on the landlords' right to enter, **with leave to reapply**.

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 One Month Notice to End Tenancy?
- Is the tenant entitled to an Order to cancel the Two Month Notice to End Tenancy?

#### Background and Evidence

The parties agreed that this tenancy started on October 01, 2015. This was a verbal agreement for the tenant to rent this basement unit on a month to month basis for a monthly rent of \$675.00 per month which is due on the 1<sup>st</sup> of each month.

The landlord testified that the tenant was served with a Two Month Notice to End Tenancy for landlords' use of the Property. The landlord testified that they did not check any of the reasons off on the second page of the Notice as they were unsure which reasons applied.

The landlord testified that the tenant was served with a One Month Notice to End Tenancy for cause (the Notice) on February 24, 2016 which was posted to the tenant's door. The Notice states that the tenant has 10 days to file an application to dispute the Notice or the tenancy will end on March 31, 2016. The Notice provides the following reasons to end the tenancy:

- 1) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*
  - (i) Damaged the landlords' property*
  - (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,*
- 2) The tenant has caused extraordinary damage to the unit/site or property*
- 3) The tenant has not done required repairs to the unit, site of property*

The landlord testified that the tenant damaged two window screens. The tenant said he would get them repaired but failed to do so straight away so the landlord sent a repair company into look at the work and then repair the damage.

The landlord testified that the tenant has been smoking in his unit and the smoke filters into the landlords' unit above. The tenant was told at the start of the tenancy that no smoking was permitted as the landlord is sensitive to smoke.

The landlord testified that the tenant or his guests have caused disturbances in the unit which has affected the landlords in the early hours of the morning. On February 22, 2016 at 2.39 a.m. there was the sound of arguing from the tenant's unit; this became very aggressive and the landlords called the police. The police came and spoke to the tenant who agreed they would be quiet. The landlord referred to their police report provided in documentary evidence concerning this incident.

There have been other incidents of loud noise where the tenant plays his music or has guests talking loudly. The landlord has had to call the tenant and ask him to turn the music down. The tenant has complied with these requests.

The landlord testified that the tenant has caused extraordinary damage to the rental unit. The tenant has been using a washing in his bathroom without the landlords' permission. The tenant was told at the start of the tenancy that no washers were permitted. The tenant's washer drain pipe was draining in the bath when it came loose and flooded the floor and the crawl space below. The landlords saw water coming under the connecting door between their units and at first thought a pipe had broken but when they gained access to the unit they saw it was caused by the tenant's washer. The insulation in the crawl space had to be replaced and the landlords still do not know what damage was done to the bathroom floor.

The landlords seek an Order of Possession effective as soon as possible.

The tenant disputed the landlords' claims. The tenant testified that only one screen was damaged after the tenant had locked himself out of his unit and he had to gain access through the window. The other screen simply required a clip and was not damaged. The landlords did not give the tenant sufficient time to make the repairs before sending their repairman in to do the work.

The tenant testified that the landlord did not inform the tenant that there was no smoking on the property. The tenant disputed that he smokes inside the unit as he is aware the landlords have young children and allergies to smoke. The tenant testified that he and a neighbour stand out on the deck to smoke and agreed that if the wind blows some smoke may filter into the landlords' unit. The tenant testified that he and the neighbour were discussing this and had agreed to smoke further away from the house.

The tenant testified that on the night of the noise incident the tenant was at home drinking with three friends. Two friends passed out and the tenant and his girlfriend

borrowed one friend's car to go and get cigarettes. While they were gone this friend woke up and threw a major tantrum because they had borrowed his car. When the tenant arrived home he told the friend to be quite and then five minutes later the police arrived.

The tenant testified that there have been a couple of other times when the landlord has called the tenant and asked him to turn down his music. This was immediately rectified as the tenant was not aware his music was so loud to disturb the landlords. The tenant testified that he no longer has friends over to his unit as he does not wish to jeopardize his tenancy.

The tenant testified that the landlords did not notify the tenant that he could not have a washer in his unit at the start of the tenancy. The tenant was doing washing when the drain pipe fell out of the bath and caused a flood on the floor. The tenant was attempting to deal with this water using towels when the landlords saw the water coming through the connecting door and they panicked. The tenant testified that he could have repaired the drywall and insulation but the landlords did not give the tenant time to do so.

The tenant seeks to have both Notices cancelled.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the Two Month Notice; the landlord is required to complete a Notice to End Tenancy in accordance with s.52 of the *Act* (form and content of Notice to End Tenancy). The landlord did not provide a copy of the Two Month Notice for this hearing but orally agreed that they did not put a reason on the Notice. S. 50(d) of the *Act* says that the landlord must state the ground for ending a tenancy. As no grounds were checked off on that Notice I find the Notice is incomplete and therefore invalid. The tenant's application to cancel the Two Month Notice is therefore allowed.

With regard to the One Month Notice to End Tenancy for Cause; In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The landlord has checked off reasons on the Notice that the tenant has engaged in an illegal activity that has (i) Damaged the landlords' property and (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. The landlord testified that it is illegal for the tenant to have a washer in his basement unit but has failed to provide evidence showing that the tenant was informed not to have a washer or that the use of the washer is illegal. The landlord has insufficient evidence to show that the tenant has engaged in any illegal activities that caused damage to the property and while I accept that there have been some minor noise incidents which were dealt with promptly by the tenant and one more serious noise incident where the police were called this again does not indicate that the tenant has engaged in an illegal activity.

With regard to the reasons given on the Notice that the tenant has caused extraordinary damage to the rental unit, the parties agreed he tenant caused some flooding when his washer drained onto the floor, however, there is insufficient evidence from the landlord that this is extraordinary damage and therefore insufficient reason to end the tenancy.

With regard to the reason given on the Notice that the tenant has not done required repairs to the rental unit.; If repairs are required through the tenant's actions or neglect the landlord must notify the tenant in writing that he is to make repairs within a deadline and if the tenant then fails to make repairs the landlord may issue the tenant with a One Month Notice. As the landlord agreed they did not inform the tenant that he is required to make repairs to the window screens within a time frame then I am not prepared to find this ground is sufficient cause to end the tenancy.

Consequently I find in the absence of any corroborating evidence, that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

I do however caution the tenant to ensure he lives respectfully in his unit bearing in mind that sound travels between the units and that the tenant refrains from smoking within the vicinity of the property to prevent smoke blowing into the landlords' unit. If the tenant continues to cause any disturbances or damage then the landlords are at liberty to serve the tenant with a further One Month Notice to End Tenancy and this may result in the tenancy ending.

### Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated February 24 2016 and the Two Month Notice to End Tenancy for Landlords Use of the Property dated February 21, 2016 are 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: April 19, 2016

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Residential Tenancy Branch