



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNC

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to cancel a notice to end tenancy and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; her legal counsel; two witnesses; the landlord; his agent; and a witness.

I note there have been two previous decisions between these parties based on previous Applications for Dispute Resolution submitted by the tenant to cancel 1 Month Notices to End Tenancy for Cause. I note the first decision written on April 28, 2014 at which time the parties agreed the tenancy would continue on the same terms and conditions.

The second decision dated January 8, 2015 records that the mother (current named tenant) was no longer living in the rental unit but rather the son had taken over the tenancy as his mother had moved out. That decision cancelled a 1 Month Notice to End Tenancy for Cause issued on May 27, 2014.

I note at the time of this hearing the mother now was living in the rental unit as the tenant and the son had moved out and is no longer a tenant. The tenant submitted her son had moved out of the unit approximately 1 year ago.

As a result, I find the previous two hearings are not related to this Application for Dispute Resolution and I have not considered them in this decision.

While the tenant has applied for more time to submit her Application for Dispute Resolution seeking to cancel a notice to end tenancy I note that the 1 Month Notice to End Tenancy for Cause was issued on May 27, 2016 and the tenant submitted her Application on June 3, 2016. She stated on her Application for Dispute Resolution that she received the Notice on May 26, 2016.

The tenant clarified at the outset of the hearing that she received the Notice on May 27, 2016. Section 47 allows a tenant who receives a 1 Month Notice to submit an Application with 10 days. As such, I find the tenant has met this obligation and the

issue of additional time is moot. Therefore, I amend the tenant's Application to exclude the matter of more time.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

#### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Act*.

Should the tenant be unsuccessful in seeking to cancel the 1 Month Notice to End Tenancy for Cause it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

#### Background and Evidence

The parties agreed the tenancy began in the summer of 2011 as a month to month tenancy for a current monthly rent of \$625.00 due on the 1<sup>st</sup> of each month with a security deposit of \$297.50 paid.

The tenant submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued on May 27, 2016 with an effective vacancy date of June 30, 2016 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

At the outset of the hearing the landlord clarified that he had not intended to indicate on the Notice that the tenant had engaged in illegal activity. The landlord thought he was only checking off that the tenant had adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant. As the landlord is not alleging any illegal activity he acknowledged, during the hearing, that he did not intend to pursue that reason as a cause on the Notice.

The landlord and his witnesses allege that the tenant continually and at all hours will knock on the doors of the witness and the landlord's agent to ask for cigarettes and alcohol. The agent also indicated that the tenant often bothers other occupants in the building as well.

The landlord's witness submitted that the tenant bothers her on an ongoing basis both for cigarettes and alcohol even though she doesn't smoke or drink. She submitted also that the tenant continues to bother her about the witness's son.

Both parties provided testimony regarding an altercation outside between the tenant; her friend and the son of the witness.

The tenant submitted that she couldn't possibly be disturbing other residents at all hours of the day or night because she goes to bed around 9:00 p.m. Her son later testified that she goes to bed between 10:30 and 11:00.

The tenant also submitted that the landlord has not provided any kind of warnings about any disturbing behaviour. She submitted that she hasn't bothered anyone in the building.

The tenant, through legal counsel, also submitted that some of the written complaints provided by the landlord are not signed by anyone and should not be considered as none of the complainants have attended the hearing. They also assert the landlord and his agent have no first-hand knowledge of any of these events. I note that 8 complaints submitted by the landlord 3 are not signed by the complainant.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property or the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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.

As noted above, the landlord does not assert the tenant has committed an illegal activity that would precipitate a cause to end the tenancy. As such, I find there is no evidence to end the tenancy for this reason given on the Notice.

In regard to the ground that the tenant has significantly interfered with or unreasonably disturbed another occupant, I find the landlord's agent and witness testimony and submissions are credible and consistent. I find the tenant's and her witness's submissions are not consistent.

As a result, I find the landlord has established that the tenant may have been asking other occupants in the building for things and that the time of day may have been unreasonable. However, I note at least one of the complaints make statements that indicate that the other occupants indulge the tenant's behaviour.

For example, one of the written complaints submitted by the landlord states, in part, "She comes up to my brother Rick's place, 301, at dinner time, all most everytime and the first thing out of her mouth is can I bum this and that and she stays until the beer

and cigaretts are gone. When she gets drunk at our expence, she turns Indian and wants to fight all white men.” [reproduced as written]

I find a reasonable response to someone who you don’t want to smoke all of your cigarettes; drink you alcohol; or even that you don’t want in your home would be to refuse them entry to your home. I find it is unreasonable to let them stay there; become intoxicated and then say you don’t want them there and that they have disturbed you.

I also find that the landlord has failed to provide detailed records of the frequency and times of these disturbances to provide sufficient evidence to establish that the disturbances provide a significant interference or unreasonable disturbance of the occupants.

Based on the above, I find the landlord has failed to establish sufficient cause to end the tenancy.

However, I caution the tenant that through this process the landlord has clearly identified that the tenant has been causing some disturbance and she should consider herself sufficiently warned that such unwanted behaviour may jeopardize her tenancy going forward.

### Conclusion

Therefore, I order the 1 Month Notice to End Tenancy for Cause issued by the landlord on May 27, 2016 is cancelled and the tenancy remains in full force and effect.

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: July 14, 2016

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Residential Tenancy Branch