



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            CNC, CNR, OLC, O

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause; for an order cancelling a notice to end the tenancy for unpaid rent or utilities; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The landlord and both tenants attended the hearing and each gave affirmed testimony. The landlord also called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness with respect to the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically respecting giving notices to end the tenancy?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on September 15, 2015 and the tenants still reside in the rental unit. Rent in the amount of \$800.00 per month is payable on the 1<sup>st</sup> day of each month. The rental unit is a basement suite and the landlord resides in the upper unit. Although no written tenancy agreement has been prepared, the tenants were to pay a \$400.00 security deposit but did not do so.

The landlord further testified that the parties had been to a dispute resolution hearing in May, 2016 during which the tenants were ordered to pay \$1,600.00 back rent, pay a pet damage deposit, and to provide the landlord with a key to the rental unit. The tenants left a key on the outside step which blew into the yard and the landlord found it on May 25, 2016 in a soaking wet envelope. The landlord tried the key, but it doesn't work. Recently, one of the tenants told the

landlord that the locks had been changed again, and the landlord does not have access to the rental unit.

The landlord also testified that on June 2, 2016 the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. It is dated June 2, 2016 and contains an effective date of vacancy of June 12, 2016 for \$800.00 unpaid rent that was due on June 1, 2016. The notice was given to an adult person at the rental unit who apparently resides with the tenants. The rent was paid in full on June 10, 2016, for which the landlord did not give a receipt or any other notification about the acceptance of rent. On July 1, 2016 the tenants gave the landlord \$300.00 for July's rent, and still owe \$500.00.

The landlord also testified that the tenants were served on May 23, 2016 with a 1 Month Notice to End Tenancy for Cause, again by giving it to an adult person apparently residing there. A copy has been provided, and it is dated May 22, 2016 and contains an effective date of vacancy of June 30, 2016. The reasons for issuing the notice state: "See attached 3 page letter." The landlord testified that she had written a letter about damage to the property and things that the landlord asked the tenants to do that they didn't comply with. The landlord has been told by police that criminal activity is taking place in and around the residence, and official notice that the residence is being monitored. Police have been at the home 3 times in the last 2 weeks.

**The landlord's witness** testified that she is the landlord's daughter and resides in the lower level of the house next door to the rental unit. The landlord's elderly mother resides in the upper unit. People are arriving at the rental unit at all hours of the night.

The witness called police because she suspected stolen items in the yard, which was confirmed by the police in a conversation. Also, one of the tenants was arrested with a stolen trailer which the witness saw. While attempting to collect rent, the witness saw crystal meth in the rental unit. The witness' relative was an addict, so the witness has seen crystal meth before. The landlord has been given notice in a damning letter which also states that the landlord could lose her house.

Also, the tenants are very rude, and the witness saw one of the tenants punch a person. The yard is full of automotive parts, and is disrespectful.

**The first tenant** (CS) testified that rent was late due to the landlord's previous agent contacting Income Assistance incorrectly advising that the tenants hadn't paid rent for the last 3 months, so income assistance was cut off. The landlord's agent didn't like the tenants, and didn't get along well with the landlord and was eventually fired. However, the landlord had to contact the Ministry to confirm in writing that the tenants reside in the rental unit, which has recently been approved. Only \$500.00 is owed for rent and the tenant received a call on Friday that the cheque is ready for the landlord.

The tenant received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on June 3, 2016 and believes it was posted to the door of the rental unit. Rent was paid in full and then the tenants paid an additional \$300.00 toward July rent on July 1, 2016.

The 1 Month Notice to End Tenancy for Cause was received on June 5, 2016 which the tenant found on a table in the yard partially under a tool box. The tenant does not know how or when it was left. The landlord also sent another copy of the 1 Month Notice to End Tenancy which was different on page 2. A copy has been provided, and the reasons for issuing the notice show:

- Tenant is repeatedly late paying rent;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
- Tenant has assigned or sublet the rental unit without landlord's written consent;
- Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order;
- *Residential Tenancy Act* only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The document also has handwriting that states: "Please see attached 3 page cover letter." The tenant is not certain of the dates that either copy was received.

The tenant further testified that with respect to the allegation of repeated late rent, Income Assistance cut off the benefit for July and the landlord was kept informed. With respect to May and June, there was major controversy with the landlord's agent. Power was cut off so the stove wouldn't work, and the other tenant got a job and the landlord agreed that half would be paid and the other half later for the month of May. However, when the tenants went to pay the second half, the landlord said she didn't want it but wanted the tenants to move out. The tenants were ordered at the hearing to pay the \$1,600.00 rental arrears and they did so.

The tenant also agreed that written notices were received by the landlord, one for refusing the landlord entry for an inspection of the rental unit. The landlord wanted access but the tenants didn't want the landlord's agent to enter because she slandered and discriminated against the tenants. Another letter was received about a pet damage deposit, but the tenant told the landlord she had to request it directly to Income Assistance. She didn't do so and no deposits were paid. When the tenants acquired a dog, the landlord was told right away who responded that it would have been better if the landlord had been told about it prior, but she didn't say it was a problem.

With respect to the lock, the tenant testified that there was none on the door at the beginning of the tenancy, so the landlord has access to the rental unit from the landlord's suite. The landlord, the landlord's previous agent and her son have been in the rental unit many times. The key was left at the back door in an envelope on May 8 and the lock has not been changed.

The tenant also testified that no assignment or sublet has taken place. Two friends stayed at the rental unit for about 3 weeks, and the tenants had a house-sitter from May 6 to 17 and again from May 21 to 26. No rent was collected from anyone.

**The second tenant** (JWH) testified that the landlord and the landlord's agent never got along, and the agent painted a bad picture of the tenant. The landlord fired her.

The stuff in the yard is not garbage, but automotive parts used by the tenant to restore or repair vehicles to sell.

The tenant has not been convicted of anything, and the residences in the area have been monitored by police for a long time, not specifically the rental unit.

The tenants' application for an order that the landlord comply with the *Act* or tenancy agreement is with respect to issuing notices to end the tenancy. Further, the landlord cannot take away a stove or laundry use, and the tenants still have to pay the same amount of hydro.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it.

With respect to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the landlord testified it was served by giving it to a person who apparently resided with the tenants on June 2, 2016. The tenant believed it was attached to the door of the rental unit. The *Residential Tenancy Act* specifies that documents served by posting to a door are deemed to have been served 3 days later. However, the landlord collected rent in full on June 10, 2016 and then collected another \$300.00 for the following month without giving the tenants any written notification that the money was accepted for use and occupancy only. Where a landlord collects rent after the effective date of vacancy without giving such notification, the landlord is generally deemed to have reinstated the tenancy.

With respect to the 1 Month Notice to End Tenancy for Cause, the tenant testified that the landlord served it twice, with a different second page. The tenant also testified that one was received on June 5, 2016. The landlord has not provided any evidentiary material, and testified that it was served on May 23, 2016 without mentioning that 2 were served. However, I have no way of determining whether or not the landlord served the first notice or the second one in accordance with the *Act* or if the one served on May 23, 2016 contained any of the reasons for issuing it. In the circumstances, I am not satisfied that the landlord has established that either of the notices were issued in accordance with the *Act*, and I cancel them.

A landlord may end a tenancy in certain situations, and I find that the landlord has attempted to do so in this case. I am not satisfied that the tenants have established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement with respect to issuing such

notices. However, the tenants also testified that power to the stove and laundry facilities were temporarily unavailable to the tenants while they still paid the same amount of hydro. A landlord must not reduce or eliminate services.

**27** (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I order the landlord to comply with the *Act* with respect to providing those services..

### Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 2, 2016 is hereby cancelled.

The 1 Month Notice to End Tenancy for Cause dated May 22, 2016 is hereby cancelled, and the tenancy continues.

I order the landlord to comply with Section 27 of the *Residential Tenancy Act* as set out above.

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 19, 2016

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Residential Tenancy Branch