



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OPC, O, FF

### Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated July 1, 2016 and received by the tenant on July 1, 2016.

The landlord applies for an order of possession pursuant to the Notice and for “other” unspecified relief.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that any of the grounds for eviction claimed in the Notice are true?

### Background and Evidence

The rental unit is a three bedroom suite in the upper portion of one half of a duplex. The landlord and her family occupy the other half.

There is no written tenancy agreement.

The tenancy started in August 2015. The monthly rent is currently \$850.00. The landlord says it is due on the first of each month. The tenant says it has been agreed that she can pay bimonthly.

The landlord does not hold any deposit money. A security deposit paid by the tenant at the start of the tenancy was returned to her as compensation for the state of the premises at move-in.

The landlord claims that the tenant is keeping extra people in the rental unit. In addition to the tenant and her child, the tenant's boyfriend Mr. P. (now her husband) has moved in with his two children.

The tenant and her husband deny it. Though the boyfriend, now husband has moved in, he says his two children live elsewhere and visit only every second weekend.

The landlord claims that a door and a window have been damaged. Mr. P. acknowledges the damage but says it was accidental and he is repairing it.

The landlord says the tenant and Mr. P. are always fighting and it is very noisy. The tenant and Mr. P. deny it, saying that the landlord's husband shouts and is noisy.

The landlord says the tenant is interfering with the sale of the home, that a realtor has refused to show it because of the tenants and it would be better if the rental unit was empty. She adduces a letter from a realty company, signed by an unidentified person saying that a realtor, Mr. M.S. has had a negative experience with Mr. P. and had an aggressive verbal confrontation and a "heated conversation" with him.

Mr. P. testifies that there is no issue with the realtor; that he once entered the rental units without permission. Mr. P. says he asked for a different realtor and that was the end of it.

The landlord says the tenant is noisy. She says Mr. P. has told her not to deal with the tenant Ms. McL. She says she won't go outside if the tenant or Mr. P. is there.

The landlord's twelve year old son testifies that Mr. P. swears a lot at him and at his parents.

Generally, Mr. P. says the landlord's claims are all lies.

Ms. McL. testifies that the landlord's testimony is all lies.

The tenant raised the issue of the payment of hydro costs for a suite below theirs. This is not a matter raised by the application and so will not be adjudicated upon at this hearing.

### Analysis

The ending of a tenancy is a very serious matter. A landlord seeking to evict a tenant will be expected to prove her claims on a balance of probabilities with convincing, cogent evidence.

In this case she has not done so.

The evidence does not satisfy me that Mr. P.'s two children are living in the rental unit. Even if they were, there is no tenancy agreement restricting the number of occupants in the rental unit and it has not been demonstrated that a couple and three children are an unreasonable number of occupants in a three bedroom rental unit.

I find that the tenant or Mr. P. has caused damage to the door and window. It is not "extraordinary" damage justifying an eviction at this point. The tenant is obliged to repair it within a reasonable time. I consider one week from this date to be a reasonable time to repair the door and window damage and I direct that the tenant do so.

While I admit the letter from the realty company into evidence, though it is not apparent who the author of it is, the letter is of little use in this matter. It is third hand evidence and in the face of the tenant's alternative story, it is of little value in determining whether the tenants have significantly interfered with the landlord's lawful right to sell the rental unit.

The evidence about excessive noise and swearing, evidence which might show that the tenant or her occupants are unreasonably disturbing the landlord, is equivocal. No particular incident or incidents were referred to nor was the noise described with any particulars so as to base a determination that a particular incident caused unreasonable disturbance. In the face of the tenant and Mr. P.'s denial, the landlord's evidence is simply too vague to permit any reasonable conclusion.

I understand that the landlord may find it easier to market her property without tenants in occupation, but she has entered into a tenancy agreement and is bound to honour it unless and until the tenant gives her good cause to end it.

In all the circumstances I find that the landlord has not established good cause for the Notice in question and I hereby cancel it.

Conclusion

The tenant's application is allowed. The landlord's application is dismissed.

The tenant is entitled to recover the \$100.00 filing fee for her application. I authorize her to reduce her next rent by \$100.00 in full satisfaction of the fee.

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: August 24, 2016

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Residential Tenancy Branch