



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNC, FF

### Introduction

The applicant Ms. K.B. seeks to cancel a one month Notice to End Tenancy for cause received September 30, 2016. The Notice claims that the tenants Ms. K.B. and Ms. P.W. or a person permitted on the property have significantly interfered with or unreasonably disturbed another occupant or the landlord or put the landlord's property at significant risk. The Notice also claims that the tenants have caused significant damage to the rental unit or has assigned or sublet without consent.

Any of these grounds, if proved, are lawful grounds for ending a tenancy under s. 47 of the *Residential Tenancy Act* (the "Act").

The DETAILS OF THE CAUSE portion of the standard Notice claims "Disturbing the peace of other tenants and damaging property."

The applicant also seeks more time to apply, though it is apparent that the application was made within the ten day period prescribed by law.

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

Have the tenants given cause in accordance with the Notice for this tenancy to end?

### Background and Evidence

The rental unit is a two bedroom suite in the lower portion of a house. The upper portion of the home is rented to others.

Ms. P.W. moved into the rental unit about sixteen years ago. She and the landlord say there is a written tenancy agreement between the two of them.

The applicant Ms. K.B. was invited by the tenant Ms. P.W. to move in in April 2014. There is no written agreement reflecting the arrangement between Ms. K.B. and Ms. P.W. nor is there any written or verbal agreement between Ms. K.B. and the landlord.

The current monthly rent is \$600.00. The landlord holds a \$250.00 security deposit.

Mr. S.A. testified for the landlord. He is a tenant in the upper portion of the home and has lived there about five years.

He says that about a year ago Ms. P.W. tore his deck off. It was about a four foot by eight foot platform of 2X4 lumber. He gained access to the deck from a sliding door in his rental unit. There were not stairs down from the deck to the ground. The removal of the deck left a four to five foot drop from his sliding door to the ground.

He says that in consultation with the landlord he reconstructed the deck, making it larger, sturdier, and with stairs down to the backyard. He says that the applicant Ms. K.B. tore the stringers away from the hanger and took all the deck boards and threw them in front of the front door to the home, leaving a note which said, "you can't stop me chainsaw."

Mr. S.A. also complains that after a flood in the laundry/storage area of the home Ms. K.B. maliciously moved all his items, including his washer and dryer into the carport, an unsecure location.

He complains that the house is a "no smoking" house and that the tenants are smoking cigarettes, pot and crack inside their rental unit.

He says K.B. has killed a shrub he planted and has moved his plants to shady areas, causing them to die.

He complains that a year ago Ms. K.B. dug holes in the yard.

The landlord Ms. G. testifies that the tenants' smoking is a fire hazard and the second hand smoke is a health hazard. She says even the neighbours have complained about it.

She confirms that Mr. S.A. was constructing a new deck for his rental unit with her authorization.

Ms. K.B. testifies that indeed she did tear down the old deck and that Mr. S.A. helped.

She says that she did not move Mr. S.A.'s belongings from the laundry/storage area, the landlord's son in law moved them.

She admits to taking and moving the new deck lumber, the boards and steps, to the front of the house. She says she was having a fit of anger with Mr. S.A. The deck had been half built for six months and Mr. S.A. was repeatedly parking his truck on the back lawn that she had planted.

Ms. K.B. says Mr. S.A.'s plants died because Ms. P.W. stopped watering them.

She says that Mr. S.A. has caused a large pile of dirt to be left outside her door for months.

Ms. P.W. testified. She says when she moved in in 2001 it was a smoking house and nothing in her lease indicates she cannot smoke there. She confirms that Mr. S.A. helped take the original deck apart. She helped too.

The applicant Ms. P.W. proposed to call Ms. D.J. as a witness, however she confirmed that Ms. D.J.'s testimony would merely relate to improvements Ms. K.B. had made. That subject is not particularly relevant to the issues at hand and so Ms. D.J.'s evidence was dispensed with.

### Analysis

It is apparent that the landlord's only agreement regarding the rental unit is with Ms. P.W. I find that Ms. P.W. is the landlord's tenant.

Mr. P.W. is not a subtenant either. There is no evidence that she rents a self contained living accommodation from Mr. P.W. Rather, she shares Ms. P.W.'s rental unit and so is merely a roommate.

The landlord's claim that her tenant has wrongfully sublet or assigned the rental unit must fail.

I find that though the applicant in this dispute is the true tenant's roommate, the application has been brought with Ms. P.W.'s knowledge and consent. I find that Ms. K.B. is her agent as applicant.

Ms. P.W. is responsible for the conduct of persons she permits on the property; namely, her roommate Ms. K.B., and so the allegations regarding Ms. K.B. can affect Ms. P.W.'s tenancy.

I find that the deck beside Mr. S.A.'s rental unit was taken down by agreement and with Mr. S.A.'s help. The landlord cannot now use that as a ground for eviction against just the lower tenant and her roommate.

The evidence regarding smoking does not satisfy me that there is any prohibition contained in the tenancy agreement against smoking in the rental unit. The lack of such prohibition does not permit tenants or roommates or guests to smoke pot or crack on the premises however.

In this case the evidence does not satisfy me that someone has been smoking crack in the rental unit. Nor does it satisfy me that if the tenant, her roommate or a guest, have smoked pot in the rental unit it has, to this point at least, unreasonably disturbed another occupant or the landlord. I therefore dismiss this item of the claim.

The evidence does not satisfy me that the tenant or Ms. K.B. have purposely tampered with Mr. S.A.'s plants or moved his belongings from the laundry/storage area after the flood. I dismiss this item of the claim.

I find that the action of Ms. K.B. in removing the deck stairs and decking lumber and placing it all at the front door to the premises to be a significant interference with Mr. S.A. and his authorized construction project.

If Ms. K.B. or Ms. P.W. were dissatisfied with the progress of the work or its impact the enjoyment of their premises the proper remedy would have been for Ms. P.W. to apply for dispute resolution for a compliance order and/or compensation.

Ms. K.B. has given good cause for the Notice to End Tenancy and the tenant Ms. P.W. is responsible for that conduct.

Conclusion

The application is dismissed. The Notice to End Tenancy dated September 30, 2016 is a valid Notice and has resulted in the ending of this tenancy on October 31, 2016.

Pursuant to s. 55(1)(b) of the *Act* the landlord will receive an order of possession.

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: November 23, 2016

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Residential Tenancy Branch