



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNC

### **Introduction**

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a Notice to End Tenancy for Cause.

The male Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and 4 pages of evidence submitted with the Application were delivered to the Landlord's mailbox. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On November 21, 2016 the Landlord submitted 39 pages of evidence to the Residential Tenancy Branch. The Landlord stated that these documents were personally served to the female Tenant on November 21, 2016. The female Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The male Tenant stated that the Tenants submitted 40 pages of evidence to the Residential Tenancy Branch on November 25, 2016. He stated that this evidence was delivered to the Landlord's mailbox on November 25, 2016. The Landlord stated that he received this evidence on November 28, 2016 and that he has not had sufficient time to consider the evidence. The parties were advised that I am not in possession of this evidence.

The parties were advised that the evidence submitted on November 25, 2016 was not served within the timelines established by the Residential Tenancy Branch Rules of Procedure, which require that an applicant's evidence be received by the respondent not later than 14 days prior to the hearing.

The parties were advised that the evidence submitted on November 25, 2016 was not being accepted as evidence for these proceedings. The Tenants were advised that they would be able to refer to this evidence during the hearing and that if, during the hearing, they believed it was necessary for me to physically view the evidence they

could request an adjournment. This hearing was concluded without the Tenants requesting an adjournment.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Preliminary Matter

The male Tenant asked that this hearing be joined with a hearing scheduled to be heard on January 05, 2017. He stated that the hearing on January 05, 2017 has been scheduled to consider the Tenants' Application for Dispute Resolution, in which the Tenants applied, in part, for an Order requiring the Landlord to make repairs to the rental unit. He stated that he believes some of the issues that will be discussed at these hearings will be discussed at the hearing on January 05, 2017.

The Landlord stated that he did not wish to wait until January 05, 2017 to have this matter resolved as he wants this tenancy to end as soon as possible.

I decline the Tenants' application to join this hearing with a hearing that is scheduled for January 05, 2017. As this hearing relates to a Notice to End Tenancy which has an effective date of October 31, 2016, I find it would be unfair to the Landlord to delay these proceedings by another 5 weeks.

### Issue(s) to be Decided

Should Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

### Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy began on July 01, 2014;
- there is a written tenancy agreement;
- the rental unit is a single family dwelling with three bedrooms;
- the Tenants are currently required to pay rent of \$1,500.00 by the first day of each month;
- on September 30, 2016 the Landlord personally served the Tenants with a One Month Notice to End Tenancy for Cause;
- the One Month Notice to End Tenancy declared that the Tenants must vacate the rental unit by October 31, 2016;
- the One Month Notice to End Tenancy declared that the tenancy was ending because the tenant has allowed an unreasonable number of occupants in the unit; that the tenant has engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the landlord; that the tenant has not done required repairs; and that the tenant has breached a

material term of the tenancy agreement.

In support of his intent to end the tenancy on the basis that there are an unreasonable number of occupants in the rental unit the Landlord stated that:

- when this tenancy began the Tenants had permission to allow a nephew and his girlfriend live in the rental unit with the Tenants;
- he did not required the nephew and his girlfriend to be added to the tenancy agreement;
- he only permitted these additional occupants because they were related to the Tenants;
- the additional occupants moved out of the rental unit, although he does not recall when they moved out;
- the Tenants have allowed other occupants to live in the rental unit, which were not approved by the Landlord;
- he does not know when the additional occupants moved into the rental unit; and
- he does not know when the additional occupants moved out of the rental unit.

In response to the allegation that there are an unreasonable number of occupants in the rental unit the male Tenant stated that:

- when this tenancy began the Tenants had permission to allow a relative and his girlfriend live in the rental unit with the Tenants;
- the relative and his girlfriend moved out of the rental unit in December of 2014;
- in December of 2014 they rented one of the bedrooms to a male, who moved out in December of 2015;
- in November of 2014 they rented one of the bedrooms to a female, who moved out in November of 2015;
- in November or December of 2015 they rented one of the bedrooms to a male, who moved out after approximately three months; and
- in October or November of 2016 they rented one of the bedrooms to a male, who is still living in the rental unit.

In support of his intent to end the tenancy on the basis that the Tenants have breached a material term of the tenancy agreement the Landlord stated that:

- when the parties signed the tenancy agreement they also signed a second agreement;
- one of the terms in the second agreement was that the Tenants must notify the Landlord if additional people move into the rental unit;
- the term in the second agreement stipulates that additional people may move into the rental unit only move into the rental unit with the consent of the Landlord;
- the term in the second agreement stipulates that if additional people move into the unit they will create an additional rental contract;
- there is a term in the second agreement that stipulates arbitration will occur if the Landlord does not agree to the additional occupants;
- he told the Tenants it was important for him to know the identity of the people

- living in the rental unit;
- the Tenants knew he did not want anyone living in the unit unless they were related to the Tenants;
- he did not ask the nephew and his girlfriend, whom he permitted to live in the rental unit, to sign the tenancy agreement;
- prior to the start of this tenancy the Tenants did not tell him that they could not afford the rent on their own and that they would need to have roommates;
- he believes that the Tenants have breached a material term of the tenancy agreement by allowing people to occupy the rental unit that have not been approved by the Landlord; and
- on June 29, 2016 the Landlord gave the Tenants written notice that he was only allowed to have two people living in the rental unit.

In response to the allegation that the Tenants have breached a material term of the tenancy agreement by having roommates the male Tenant stated that:

- the Tenants understood that they could have an additional two people living in the rental unit;
- the Tenants did not understand that the Landlord wanted to know the identity of people living in the rental unit;
- when the Landlord allowed a relative and his girlfriend to live in the rental unit the Landlord did not ask that they be named on the tenancy agreement;
- prior to the start of this tenancy they clearly informed the Landlord that they could not afford the rent on their own and that they would need to have roommates; and
- on June 29, 2016 the Landlord gave them written notice that he was only allowed to have two people living in the rental unit.

In support of his intent to end the tenancy on the basis that the Tenants have breached a material term of the tenancy agreement the Landlord stated that:

- he believes that the Tenants have breached a material term of the tenancy agreement by not maintaining the yard;
- there is a term in the second agreement that stipulates no garbage or debris can be left on the property;
- there is a term in the second agreement that the Tenants are responsible for maintaining the appearance of the yard;
- the photographs on pages 13 to 18 show the condition of the residential property, which he contends is unsightly;
- the items depicted in the photographs on pages 13 and 18 were not on the residential property prior to the start of the tenancy; and
- all of the aforementioned photographs were taken approximately three weeks ago.

In response to the allegation that the Tenants have breached a material term of the tenancy agreement by not maintaining the yard the male Tenant stated that:

- the items depicted in the photograph on page 13 are beside the Landlord's shop,

which is not included in the tenancy;

- the items depicted in the photograph on page 13 do not belong to the Tenants or their guests;
- the items depicted in the photograph on page 13 were on the property at the start of the tenancy;
- the photograph on page 14 depicts the condition of the rental property approximately one year ago;
- the bin in the photograph on page 14 is no longer on the property;
- the shopping carts in the photograph on page 14 have been moved and are stored in a less obvious place;
- the tarp depicted in the photograph on page 18 was in place at the start of the tenancy;
- he is waiting to dispose of the items depicted in the photograph on page 17;
- with the exception of the items depicted in the photograph on page 17 he believes any property that belongs to the Tenants is being stored in a reasonable manner.

In support of his intent to end the tenancy on the basis that the Tenants have engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the landlord the Landlord stated that:

- on September 24, 2016 the Tenants were burning trash on the residential property;
- municipal bylaws prohibit burning trash;
- the fire department issued a warning letter as a result of that fire, but no fines were imposed;
- the fire did not cause any property damage; and
- he believes the fire could have spread to other areas of the residential property.

In response to the allegation that the Tenants engaged in illegal activity the male Tenant stated that:

- they hired someone to clean the residential property;
- on September 24, 2016 the person they hired burned some trash on the property;
- the person who started the fire did not know burning was prohibited;
- by the time the fire department attended the property the fire had been extinguished;
- the fire department issued a warning letter as a result of that fire, but no fines were imposed; and
- the fire did not cause any property damage.

In support of his intent to end the tenancy on the basis that the Tenants have not done required repairs the Landlord stated that:

- the Tenants repaired a hole in the drywall, but the repair is inadequate.
- the photograph on page 10 shows the damaged drywall;

- the photograph on page 11 shows the inadequate repair;
- the carpet in one of the bedrooms is badly stained;
- the photograph on page 9 shows the damaged carpet;
- there is a broken window in one of the upstairs bedrooms;
- the window was not broken at the start of the tenancy; and
- the window is still broken.

In response to the allegation that the Tenants have not done required repairs the male Tenant stated that:

- the drywall was damaged by their guests;
- the Tenants repaired the damaged drywall;
- the photograph on page 10 shows the damaged drywall;
- the photograph on page 11 shows the drywall after it was repaired for the second time;
- the carpet in one of the bedrooms is very dirty;
- the carpet has not yet been cleaned;
- the photograph on page 9 shows the damaged carpet;
- there are two broken windows on the second level of the rental unit;
- those windows were broken at the start of the tenancy; and
- the windows have not been repaired.

### Analysis

Section 47 of the *Act* authorizes landlords to end a tenancy for a variety of reasons. The burden of proving there are grounds to end the tenancy rests with landlords.

Section 47(1)(c) of the *Act* authorizes a landlord to end a tenancy if there are an unreasonable number of occupants in a rental unit.

On the basis of the testimony of the male Tenant and in the absence of evidence to the contrary, I find that there has never been more than six people living in the rental unit at any given time and there has never been more than four people living in the unit for more than two months. I find that six people occupying a three bedroom home is not unreasonable and I therefore find that the Landlord has not established grounds to end this tenancy in accordance with section 47(1)(c) of the *Act*.

Section 47(1)(h) of the *Act* authorizes a landlord to end a tenancy if the tenant breaches a material term of the tenancy agreement and does not correct the breach after the landlord gives written notice to correct the breach. On the basis of the undisputed evidence I find that on June 29, 2016 the Landlord informed the Tenants, in writing, that they were only permitted to have two people living in the rental unit.

Residential Tenancy Branch Policy Guideline #8, with which I concur, defines a material term as a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. I find that the Landlord

has failed to establish that the term in the tenancy agreement that limits the number of occupants to two people unless the Landlord gives permission for additional occupants is a material term in the tenancy agreement.

In concluding that there was insufficient evidence to corroborate the Landlord's testimony that both parties clearly understood that the number of occupants was an important part of their tenancy agreement I was heavily influenced by the absence of evidence to corroborate the Landlord's testimony that the Tenants knew he did not want anyone other than relatives living in the unit or that refutes the male Tenant's testimony that the Landlord was told that the Tenants needed to have roommates in order to pay the rent.

Section 6(3)(b) of the *Act* stipulates that a term in a tenancy agreement is unenforceable if it is unconscionable. A term in a tenancy agreement is unconscionable if it is unfair to the tenant or extremely one-sided in favour of the landlord. I find that any term in a tenancy agreement that requires a tenant to have permission from the landlord to have someone live in the rental unit, who is invited into the unit by the tenant, is unconscionable as it gives a landlord an unreasonable amount of control to the landlord. I therefore find that the Landlord does not have the right to enforce the term of the tenancy agreement that requires the Tenants to obtain permission before allowing someone to live with them.

I find that the Landlord has submitted insufficient evidence to establish that the items depicted in the photograph on page 13 accumulated after the tenancy began. In reaching this conclusion I was heavily influenced by the absence of evidence that refutes the male Tenant's testimony that those items were present at the start of the tenancy. I therefore find that the Landlord has submitted insufficient evidence to establish that the Tenants are obligated to dispose of these items.

I find that the Landlord has submitted insufficient evidence to establish that the items depicted in the photograph on page 14 are still being stored in an unsightly manner on the property. In reaching this conclusion I was heavily influenced by the absence of evidence that refutes the male Tenant's testimony that those items have been moved or that corroborates the Landlord's testimony that they still need to be removed.

In adjudicating this matter I note that none of the items in the photograph on page 14 can be seen in the photograph on page 18, which is in the same general location. I find that this lends credibility to the male Tenant's testimony that the items have been moved. I therefore find that the Landlord has submitted insufficient evidence to establish that the Tenants need to dispose of the items depicted in the photograph on page 14.

I find that the Landlord has submitted insufficient evidence to establish that the tarp depicted in the photograph on page 18 was not in place prior to the start of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that refutes the male Tenant's testimony that the tarp was present at the start of the tenancy

or that corroborates the Landlord's testimony that the tarp was not present at the start of the tenancy. I therefore find that the Landlord has submitted insufficient evidence to establish that the Tenants are obligated to remove the tarp.

Even if I accepted that the manner in which the yard is being maintained is a material term of the tenancy, I would find that the Landlord has submitted insufficient evidence to establish that the Tenants are not maintaining the property in a reasonable manner. In adjudicating this matter I was influenced, in part, by the possibility that some of the items stored on the property do not belong to the Tenants.

In adjudicating this matter I was further influenced by my conclusion that the property the Tenants acknowledge owning appears to be reasonably contained and is stored in a manner that is consistent with the condition of the fence and outbuildings on the property.

I find that the Landlord has not established grounds to end this tenancy in accordance with section 47(1)(h) of the *Act*.

Section 47(1)(e)(iii) of the *Act* authorizes a landlord to end a tenancy if a tenant or a person permitted on the property by a tenant engages in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

Even if I were to conclude that contravening a burning bylaw constitutes an illegal activity as that term is intended by the *Act*, I find that there is insufficient evidence to establish that the fire used to burn trash jeopardized a lawful right or interest of another occupant or the landlord. In reaching this conclusion I was heavily influenced by the undisputed evidence that the fire caused any property damage and by the absence of any evidence that corroborates the Landlord's concern that the fire placed the property at risk.

I therefore find that the Landlord has not established grounds to end this tenancy in accordance with section 47(1)(e)(iii) of the *Act*.

Section 47(1)(g) of the *Act* authorizes a landlord to end a tenancy if a tenant does not repair damage to the rental unit, as required under section 32(3) of the *Act*, within a reasonable time. Section 32(3) requires tenants to repair damage that is caused by the action or neglect of the tenant or a guest of the tenant.

On the basis of the undisputed testimony I find that the drywall in the rental unit was damaged by the Tenants' guests and that they are required to repair the drywall, pursuant to section 32(3) of the *Act*. On the basis of the photograph submitted in evidence I find that the drywall has not been adequately repaired.

On the basis of the undisputed testimony I find that the carpet in one of the bedrooms is in need of cleaning.

I find that the Landlord has submitted insufficient evidence to establish that a window



was broken during this tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that the window was not broken at the start of the tenancy or that refutes the male Tenant's testimony that the window was broken at the start of the tenancy. As the Landlord has submitted insufficient evidence to show that a window was broken during the tenancy, I cannot conclude that the Tenants are obligated to repair the window(s).

Although I have found that the Tenants are obligated to adequately repair the damaged drywall and to clean the carpet, I am not satisfied that the Landlord has grounds to end this tenancy on the basis of the evidence that shows the drywall repairs and cleaning are not yet complete. In reaching this conclusion I was influenced, to some degree, by my conclusion that the necessary repair and cleaning are not significant. Given that the repair and cleaning are not significant I do not find it unreasonable for the Tenants to delay these specific repairs until the end of the tenancy.

I do not find that the Landlord will be unreasonably disadvantaged by the delay in repair and cleaning, provided the Tenants complete those repairs prior to the end of the tenancy as they are required to do pursuant to section 37(2)(a) of the *Act*.

I find that the Landlord has failed to establish he has grounds to end this tenancy and I therefore grant the application to set aside the One Month Notice to End Tenancy that is dated September 30, 2016.

### Conclusion

The application to set aside the One Month Notice to End Tenancy is granted. This tenancy shall continue until it is ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 01, 2016

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Residential Tenancy Branch