



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNC; FF

### **Introduction**

This Hearing was scheduled to be heard by teleconference at 1:30 on November 10, 2016. This is the Tenant's Application to cancel a notice to end tenancy for cause; and to recover the cost of the filing fee from the Landlord.

Both parties signed into the Hearing and gave affirmed testimony.

The Tenant served the Landlord with his Notice of Hearing documents on September 21, 2016, by handing the documents to the Landlord. The Tenant also served the Landlord with documentary evidence on October 24, 2016. The Landlord acknowledged receipt of the documents. The Landlord served the Tenant with her documentary evidence on October, 26, 2016, and the Tenant also acknowledged receipt of her documents.

### **Issue(s) to be Decided**

Should the Notice to End the Tenancy for Cause issued September 20, 2016 (the "Notice") be cancelled?

### **Background and Evidence**

The Notice was posted to the Tenant's door on September 20, 2016.

The Tenant moved into the rental property on February 19, 2016. Monthly rent is \$900.00, due on the 18<sup>th</sup> day of each month. The Tenant paid a security deposit in the amount of \$450.00.

The Tenant rents a single bedroom in the rental unit and shares the living areas with other occupants. The owner/landlord of the rental property lives overseas. The landlord's agent SG lives in the rental property with the other occupants. There are 6 washrooms, 11 bedrooms, and 12 people living in the rental property.

The Notice gives the following reasons for ending the tenancy:

- 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.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

SG gave the following testimony and submissions:

SG testified that the Tenant's behaviour is "distracting others" in the rental unit. She stated that he "always takes pictures around the house, including a photograph of a "minor girl's room". This girl told SG that she was afraid of the Tenant. SG stated that the Tenant took a picture of the girl on September 17, 2016, and made the girl cry. SG then corrected herself and said the Tenant took a photograph "in front of the girl's room", but SG was "not sure if he took a picture of the girl, too". SG called the police. SG stated that the officer investigated and told the Tenant to stay away from the girl's room and the washroom closest to the girl's room. SG testified that there is a washroom beside the Tenant's room which is the washroom he is supposed to use.

SG stated that the Tenant did not listen and kept using the girl's washroom, washing his underwear and pants in the washroom. SG stated that the girl became nervous and went to the hospital with muscle cramps. SG stated that since then, "all of the girls are nervous and have to stick together. They don't go upstairs by themselves."

SG stated that the Tenant is doing other things "to distract others and upset other tenants". She stated that she "can't remember all the details, but recently SG's friends came over and the Tenant said something rude to SG's friend." SG testified that the Tenant asked why SG's friend had to be there.

SG testified that the Tenant also said another occupant's car was parked in front of the building and the fumes were making him sick.

SG stated that the rental property is a "homestay" for students, but the Tenant refused to provide student ID when he "registered". SG stated that the Tenant does not work or go to school.

The Tenant gave the following testimony::

The Tenant stated that SG's claims are "false and a lie". He testified that he didn't take pictures of the girl's room and that he told that to the officer. The Tenant stated that he

is entitled to use other washrooms when the bathroom closest to his room is busy. The Tenant stated that sometimes others use the bathroom closest to his room and that they “take too long”.

### **Analysis**

When a tenant seeks to cancel a notice to end the tenancy, the onus is on the landlord to provide sufficient evidence that the tenancy should end for the reasons provided on the notice.

I find that SG provided insufficient evidence that the Tenant has engaged in illegal activity that has adversely affected the quiet enjoyment or physical wellbeing of another occupant. The Tenant disputed that he was taking photographs and no other occupant gave testimony to support SG’s allegations. SG provided no evidence that the Tenant was given written notice of a breach of the tenancy agreement.

Therefore, I find that the Notice is not a valid notice to end the tenancy and it is cancelled. I advised the parties of my decision during the Hearing.

The Tenant has been successful in his Application and I find that he is entitled to recover the cost of the \$100.00 filing fee. Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct \$100.00 from future rent due to the Landlord.

### **Conclusion**

The Notice to End Tenancy for Cause issued September 20, 2016, is cancelled. The tenancy will continue until it is ended in accordance with the provisions of the Act.

The Tenant may deduct \$100.00 from future rent due to the Landlord. 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: December 09, 2016

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Residential Tenancy Branch