



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUPERMEN PROPERTY MANAGEMENT INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      CNC

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act"), for cancellation of the landlord's One Month Notice To End Tenancy for Cause (the "One Month Notice").

The landlord and the tenant appeared at the teleconference hearing and gave affirmed testimony. The tenant appeared with an advocate. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

### Preliminary and Procedural Matters

The tenant submitted late evidence serving the landlord with a copy of the evidence on January 10, 2017, by leaving a copy in the landlord's mailbox. The landlord testified that she received the evidence package on January 11, 2017. The tenant's advocate indicated that the delay was due to the advocate's unavailability as a result of the holiday season and illness. Due to the late service, the landlord consented to all but one letter being considered as evidence. It was agreed by the parties that I would not consider the letter written by J.N., labeled 'Appendix C'. The landlord did not object to the balance of the documents submitted by the tenant.

### Issue(s) to be Decided

- Should the landlord's One Month Notice To End Tenancy for Cause (the "One Month Notice") be cancelled?

### Background and Evidence

The undisputed evidence of the landlord and tenant established that a month to month tenancy started on September 1, 2014 pursuant to a written tenancy agreement signed by the tenant on August 19, 2014. Rent in the amount of \$700.00 is due on the first day of each month. The landlord received a security deposit in the amount of \$350.00 on or about August 18, 2014. The

tenant testified that she did not have a copy of the tenancy agreement, however, the landlord testified to having a copy. A copy of the tenancy agreement was not submitted as evidence. The current landlord took over the responsibilities from a previous landlord who dealt with the tenant at the start of the tenancy.

The landlord and the tenant agree that a One Month Notice dated December 7, 2016 was served on the tenant in person by leaving a copy with the tenant on December 7, 2016. The One Month Notice required the tenant to vacate the rental unit on January 7, 2017.

The landlord's reasons for ending the tenancy set out in the One Month Notice are as follows:

- The tenant has allowed an unreasonable number of occupants in the unit/site;
- The tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety of lawful right of another occupant or the landlord (smell is Bad);
- The tenant or a person permitted on the property by the 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;
- Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The landlord testified that the tenant has been a quiet tenant up until the last couple of months. The landlord testified that she was getting a lot of phone calls at night with complaints including people partying and the smell of drugs travelling through the exhaust fan of the subject rental unit to neighboring units. The landlord testified that there has been a lot of noise coming from the tenant's unit that is disturbing the tenant's neighbors. The landlord testified that last year there was a real bad smell coming from the tenant's unit.

The tenant testified that there hasn't been any partying in her unit as alleged. The tenant testified that she has been having friends over for dinner regularly, twice a week, at which time they also listen to music until 8:30 p.m. when the music is turned off.

The tenant testified that she believes the landlord's One Month Notice centers around the evening of December 6, 2016 when the tenant had four friends over for dinner.

The tenant testified that the police attended and spoke to the tenant about a noise complaint. The tenant testified that the officer did not find any noise disturbance and left.

The tenant submitted a letter dated December 15, 2016 from a witness, C.H., who was present at the tenant's unit on the evening of December 6, 2016. The witness indicates in his letter that the police attended around 10:30 p.m. for a noise complaint but that they were really quiet at the time and there was no music on. The witness confirmed that the police officer left without incident.

The tenant testified that the landlord has not sent the tenant any letters of complaint notifying the tenant that there have been complaints made against her.

The landlord testified that there were more than five people in the tenant's unit on December 6, 2016 based on the voices she heard. The landlord estimated that there had to have been ten people in the unit. The landlord testified that she went to the unit at 11:00 p.m. that night and heard music playing and yelling. The landlord testified that the tenant was not home at that time.

The tenant testified that when she moved into the unit she had a cat which later had kittens. The tenant testified that she intends on keeping two kittens for a total of three cats. The tenant testified that she was not asked for a pet deposit when she moved into the unit nor was there any written request to do so at any time.

The landlord testified that the tenancy agreement requires a pet deposit to be paid but it was never collected or received.

The tenant testified that there is no smell coming from her unit and that the smell is coming from elsewhere downstairs.

### Analysis

Based upon the above testimony and documentary evidence, and on the balance of probabilities, I find as follows.

While it is the tenant's application to cancel the One Month Notice, the burden is on the landlord to establish the grounds for ending the tenancy that are set out in the One Month Notice, on a balance of probabilities. I find that there is insufficient evidence to substantiate the landlord's reasons for wanting to end the tenancy.

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

I find that there is insufficient evidence that the tenant has allowed an unreasonable number of occupants in the unit. It is clear from the landlord's testimony that she does not know how many

occupants were in the tenant's unit on December 6, 2016 as she is estimating the amount based upon the voices she heard. I accept the tenant's testimony that there were only five occupants including herself in the unit on December 6, 2016. I do not find that this is an unreasonable number of occupants for a dinner engagement. There was no other evidence let by the landlord of any other complaints regarding the number of occupants.

Section 47(1)(d) of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has:

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord; or
- (ii) seriously jeopardized the health or safety or a lawful right or interest of another occupant or the landlord.

I find that the landlord's evidence about the noise disturbances lacks sufficient detail and particulars in regards to the complaints made by other occupants. I have also taken into consideration the fact that the landlord did not provide any written notice to the tenant about any complaints having been made; and that the tenant's testimony about the noise level in the unit on December 6, 2016 is supported by a witness statement. Accordingly, I find that there is insufficient evidence that the noise from the tenant's unit is unreasonable. Similarly, I also find that there is insufficient evidence about the noise complaints to find that there is substantial interference with the health, safety or lawful right or interest of any other occupants or the landlord.

Based upon the foregoing, I find that there is insufficient evidence that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; or seriously jeopardized the health or safety of lawful right of another occupant or the landlord.

Section 47(1)(e)(ii) of the *Act*, allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the 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.

Policy Guideline #32 establishes that the party alleging the illegal activity has the burden of proving that the activity was illegal. Furthermore, the guideline explains that the party should be prepared to establish the illegality by providing a legible copy of the relevant statute or bylaw in accordance with the Rules of Procedure.

I find that there is insufficient evidence to support a finding of illegal activity, particularly, where the landlord has not submitted a copy of any relevant statute or by-law nor referred to any in her submissions.

Section 47(1)(a) of the *Act*, allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement.

As the landlord did not submit a copy of the tenancy agreement, I find that there is insufficient evidence as to the requirement to pay a pet damage deposit and the date the payment was to be made which are terms the tenant has disputed. Without a copy of the tenancy agreement, there is insufficient evidence to support that the tenant did not pay the pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement.

Based upon my findings that there is insufficient evidence to support any one of the reasons set out in the landlord's One Month Notice, I find that the tenant is entitled to cancellation of the landlord's One Month Notice. Accordingly, I cancel the landlord's One Month Notice and the tenancy will continue until such time as it ends in accordance with the *Act*.

### Conclusion

I cancel the One Month Notice dated December 7, 2016 and the tenancy will continue until such time as it ends in accordance with the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: February 07, 2017

---

Residential Tenancy Branch