



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order to cancel the One Month Notice to End Tenancy for cause and to recover the filing fee from the landlord for the cost of this application.

The tenant and an agent for the landlord (KC) attended the conference call hearing, and were given the opportunity to be heard, to present evidence, to make submissions under oath and to cross examine the other party and witness. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy for cause?

### Background and Evidence

The parties agreed that this month to month tenancy started on April 01, 2009 with the tenant's previous landlord. This landlord later purchased the property and assumed the

tenancy. Rent for this unit is \$1,100.00 per month due on the 1<sup>st</sup> of each month. A copy of the tenancy agreement has been provided in documentary evidence by both parties.

KC testified that the tenant was served a One Month Notice to End Tenancy for cause (the Notice) on March 16, 2017 by putting it in the tenant's mail slot. A copy of the Notice has been provided in documentary evidence. The Notice has an effective date of April 30, 2017 and provides the following reasons to end the tenancy:

- 1) *The tenant or a person permitted on the residential property by the tenant has*
  - (i) *Put the landlord's property at significant risk;*
- 2) *The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*
  - (i) *Jeopardized a lawful right or interest of another occupant or the landlord*
- 3) *Security or pet deposit was not paid within 30 days as required by the tenancy agreement.*

KC testified that the tenant has been operating an escort business from the property in an area of town that is not zoned for business of this nature and without a business licence. This has put the landlord's property at significant risk because the landlord/owner of the property can be fined by the city every seven days. The tenant is able to obtain a business licence for being an escort but has not done so.

KC testified that the tenant has been fined by the City Bylaw Officer and the landlord faces fines if the tenant is not removed from the unit. KC testified that currently the City has not yet sent any warning letters to the landlord as they have met with the Bylaw Officer and they are working with the landlord to resolve this issue. Further to this the tenant never paid a pet damage deposit to the landlord after being verbally asked to pay one when her dog became a nuisance and caused damage to the unit.

The tenant testified that she does not operate an escort business from the unit. She operates a business of being a Kind Companion for older gentlemen. The tenant meets clients in their own homes, a hotel or at the home of a friend. Clients are not brought to the rental unit.

The tenant testified that KC filed a false complaint with the City saying he was a neighbour and this resulted in the tenant being fined \$1,000.00 because of false information provided to the Bylaw Officer. The tenant testified that she has now applied for a business licence for her Kind Companion business because she does not provide sexual favours to clients for money. The tenant referred to the documentary evidence provided by the landlord and testified that these are adverts from a click based site in which the tenant's phone number is shown on an escort site because the site she does advertise on, which is a female companion site, also links to this escort site. The adverts provided are not the tenant's adverts even though they do show her phone number. The tenant testified that if the landlord's property is at significant risk or a lawful right of the landlord has been jeopardized it is because KC filed a complaint against the tenant at the city.

KC disputed that he impersonated a neighbour when he called the City; KC testified that he was hired to serve the tenant with Notice to End Tenancy. The original Notice served was a Two Month Notice which was dealt with at an early dispute and after that the landlord found out about the tenant's occupation so the City was called to inform them of the tenant working out of the home conducting this kind of business. The adverts provided came up using the tenant's phone number. The tenant testified that she is simply a kind companion yet the reviews provided in documentary evidence shows she is conducting "in calls" and "out calls" and is running an escort business from home. The landlord does not want his property to be known as an illegal brothel in town.

The tenant testified that the reviews provided in the landlord's evidence are not reviews about her. The tenant's phone number has been attached to some of the reviews with other escort's names and other reviews have different phone numbers. If any clients call

the tenant then she explains that she only spends time with people and that no clients come to her home.

KC asked the tenant what her business title is. The tenant responded Kind Companion. KC asked what type of certificate has the tenant obtained for her line of work. The tenant responded that it does not take any schooling to do her work just to engage in conversations with people and she does not need a licence to do this. KC asked if the tenant engages in any sexual activity or has clients at home. The tenant responded no and she is able to use a friend's home. KC asked if the evidence provided by the tenant is her advert that shows herself. The tenant responded yes, there is nothing wrong with showing a picture of herself as clients want someone younger to sit and chat with. KC asked if the tenant is not an escort or a prostitute then why has the tenant provided evidence showing the legality of these professions. The tenant responded to show that the landlord has no grounds to accuse the tenant of an illegal activity.

KC calls his witness. This witness is the business licencing inspector and bylaw enforcement officer for the City. KC asked the witness if he is familiar with the rental unit and is he dealing with this property. The witness responded yes. The tenant has been operating a business without a licence as an escort when there is no zoning or business licence in place. The witness testified that he did research on the internet and goggle, by using the tenant's phone number and identified the tenant by her photo and phone number and confirmed with KC's partner that this was the tenant. The witness spoke with the tenant and she denied being an escort, but from the evidence the witness deemed it was obvious she was an escort. The house is located in an area of town that allows businesses but does not allow a business of this nature. The tenant has since come to City Hall and has applied for a home based business minor licence as a kind companion and provided details for that work when it is clear it is an escort business.

The Arbitrator asked the witness if the tenant has been fined. The witness responded that a letter was sent on April 19, 2017 concerning two bylaw infraction notices; one for a business licence and one for zoning. Each carries a \$500.00 fine. These tickets were

discussed to the tenant and it is the City's intent for voluntary compliance; however, the tenant has now filed to dispute the tickets. Usually the onus is on the owner of the property to comply; but this matter is between the City and the tenant. The owner could be fined for the zoning violation but no tickets have been issued to the owner. The City will go to Provencal Court against the tenant; but currently they will go through an adjudication process when all the facts will be looked at. The Arbitrator asked the witness; if clients are not coming to the tenant's home does that affect the business licence or zoning. The witness responded no it makes no difference. The tenant applied for a business licence on April 25, 2017.

KC asked the witness if they are unsuccessful in removing the tenant will the landlord be fined for not complying with City Bylaws. The witness responded that he is satisfied that the owner is doing his due diligence and therefore they would not fine the owner.

KC testified that the tenant only applied for a business licence a month after she was served the Notice and she has lived at the property for nine years. The tenant is not being truthful and the evidence shows she is an escort. The landlord seeks an Order of Possession effective two days after service.

The tenant testified that she is not an escort and does not conduct her business out of the home. The tenant seeks to have the Notice set aside and to recover her filing fee.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

When considering a One Month Notice to End Tenancy for Cause the landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

With this in mind I have considered the first reason provided on the Notice; that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; in considering this reason I have looked at the evidence and testimony before me. The landlord testified that the tenant's activities in operating an escort business from the property has put the landlord's property at risk because the landlord could be fined by the City as the property is not zoned for a business of this nature. The landlord's witness is the City Bylaw Enforcement Officer and the business licencing inspector for the City and he provided testimony that as the landlord has done his due diligence then the city would pursue this matter with the tenant and not the landlord. I therefore find there is insufficient evidence that the tenant's none compliance with business licencing or zoning will impact on the landlord or put the property at significant risk.

With regard to the second reason provided on the Notice; that the tenant has engaged in an illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord; I refer the parties to the Residential Tenancy Policy Guidelines #32 which state:

The *Residential Tenancy Act* provides that a landlord may terminate a tenancy for illegal activity that meets one or more of the following requirements:

- has caused or is likely to cause damage to the landlord's property
- has adversely affected or likely to adversely affect the quiet enjoyment, security, safety or physical wellbeing of another occupant of the residential property
- has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

This Guideline is intended to clarify relevant issues such as the meaning of "illegal", what may constitute "illegal activity" and circumstances under which termination of the tenancy should be considered.

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the Arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

Breaches of criminal statutes, if minor or technical, may not rise to the level of illegal activity under the Legislation. However, more serious breaches of the same statute may rise to that level. For example, a failure to obtain a business license to work at home, so long as this would otherwise not contravene the tenancy agreement, would not be an illegal activity warranting termination of the tenancy. On the other hand, running a brothel in the rental unit would be an illegal activity warranting termination of the tenancy.

While I accept, from the evidence presented, that it is likely the tenant operates an escort business out of the home, there is insufficient evidence to show that the tenant

entertains clients at home or the impact that this business has on the landlord. This is a single family home so it is unlikely that the tenant's business impacts on other occupants and there is no mention of neighbours raising any concerns. There is insufficient evidence to show that this business has caused or is likely to cause any damage to the home or that it may cause jeopardy to the landlord.

The tenant's evidence suggests that currently being an escort or prostitute is not considered a crime in Canada. It is clear the tenant does not yet have a business licence from the City to operate her business from her home; however, this standing alone is not considered sufficient to end a tenancy and there is no provision under the tenancy agreement to prevent the tenant operating any business from her home and it is clear from the evidence presented that the tenants former landlord was aware of the tenant's profession when he rented her the home. The guideline does mention that if the tenant was running a brothel from the home then this would be sufficient grounds to end the tenancy; however, no evidence has been put forward to suggest this.

With regard to the zoning violation; there is no provision under the *Act* to end a tenancy due to a zoning violation and there appears to be little impact on the landlord due to this as the landlord's own witness confirmed that they will pursue the tenant and not the landlord over this matter as the landlord has done his due diligence in bringing the matter to the attention of the City and issuing notice to the tenant. Therefore, this is not sufficient to warrant an end to the tenancy.

Overall, I find the tenant's actions in conducting a business of this nature, has minimum impact on the landlord and therefore this is insufficient reason to end the tenancy.

With regard to the landlord's third reason provided on the Notice; that a security or pet damage deposit was not paid within 30 days as required by the tenancy agreement. The tenant has provided a letter from her former landlord who stated that the tenant's dog had never been a problem and therefore he felt there was no need for a pet damage deposit.



If the tenants original landlord never asked for a pet damage deposit then the current landlord may not ask for one eight years after the start of the tenancy. Consequently, I find this reason to end the tenancy has no merit.

After consideration of the above, I find there is insufficient evidence to prove the reasons listed on the Notice. Accordingly, I uphold the tenant's application and the One Month Notice is hereby cancelled and is of no force or effect.

The tenant is entitled to recover her filing fee of **\$100.00** from the landlord pursuant to s. 72(1) of the *Act*. The tenant may deduct that amount from her next rent payment when it is due and payable to the landlord.

#### Conclusion

The tenant's application is allowed. The One Month Notice to End Tenancy for Cause dated March 16, 2017 is cancelled and the tenancy will continue.

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: May 01, 2017

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Residential Tenancy Branch