



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      CNC, OLC, LRE, PSF, RR, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking:

- an order cancelling a notice to end the tenancy for cause;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement;
- an order suspending or setting conditions on the landlord's right to enter the rental unit;
- an order that the landlord provide services or facilities required by the tenancy agreement or law;
- an order reducing rent for repairs, services or facilities agreed upon but not provided; and
- to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The landlord also called one witness who gave affirmed testimony, and the parties were given the opportunity to question each other and the witness and to make submissions.

No issues with respect to service or delivery of documents or evidence were raised.

At the commencement of the hearing the tenant agreed that not all of the applications are related, and I determined that the primary application is for an order cancelling a notice to end the tenancy for cause. The balance of the applications is not sufficiently related, and as per the Rules of Procedure, those matters are dismissed with leave to reapply.

### Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began sometime last year and the tenant still resides in the rental unit. Rent in the amount of \$1,000.00 per month is payable in advance on the last day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$500.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite, and the landlord and family reside in the upper unit of the home. A copy of the tenancy agreement has not been provided for this hearing.

The landlord further testified that on April 26, 2017 the landlord personally served the tenant with a One Month Notice to End Tenancy for Cause, a copy of which has been provided for this hearing by the tenant. It is dated April 26, 2017 and contains an effective date of vacancy of May 31, 2017. The reasons for issuing it state:

- 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 or lawful right of another occupant or the landlord;
- 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.

When the parties entered into the tenancy agreement, the biggest thing was no smoking and no pets, which is contained in the tenancy agreement. The landlord's son is highly allergic, and the landlord has seen the tenant smoke on the property and outside the basement suite door, and neighbours have also complained that the tenant smokes on their property. The tenancy agreement specifies no smoking on the property and the landlord didn't know that the tenant smoked at the time.

On April 16, 2017 the tenant called the landlord saying that the landlord's family was being too loud and swore at the landlord's daughter, who had answered the phone. The landlord called the police who arrived to see how many people were in the house and the landlord and one of her 2 children were in bed. The landlord's daughter is afraid to take out the dog. The tenant swears and yells and is rude. The tenant got mad at the landlord when the internet went down and the landlord explained that it was not done by the landlord and the landlord was also having difficulties. Cable and internet are included in the rent, and the landlord didn't cut off either. The issue is with the cable company, and the landlord has reported it.

**The landlord's witness** testified that she is a neighbour of the rental unit and the tenant went to the witness' home asking if the witness had parked in the tenant's parking spot on the road. The

witness had company at the time, and the tenant was angry and intimidating. The witness told the tenant it was not the witness' car.

The witness also saw an exchange between the tenant and the landlord a couple of months ago. The tenant was very aggressive, swearing and in attack-mode. The exchange got worse and the tenant was screaming and swearing about ordering a move on Shaw, and the landlord wanted the tenant to pay for it. The landlord was accompanied by her husband and father, as well as her son and daughter.

The witness left for about a half hour and asked if everyone was okay upon her return, and a gentleman told the witness it was about a movie.

The witness smokes sometimes, and has done so on the property she rents.

**The tenant** testified that he occasionally smokes marihuana and had done so on the neighbour's property and the neighbour has never asked the tenant to not do so. When the tenant does smoke, he does so on the sidewalk.

The tenant's 6 year old daughter ordered \$150.00 worth of movies and the tenant asked the landlord to call Shaw Cable to get the charges removed, which the tenant had done in the past. About an hour later, the landlord and her son arrived at the rental unit saying they wanted to put a lock on the cable box to prevent it again and the tenant agreed. The tenant was having dinner at the time and the landlord's son came out of a bedroom with a cable box in his hand and told the tenant, "This is bull shit," and asked why the tenant would allow a TV in his daughter's room. The tenant was sitting with family, and the landlord's son was being rude and the tenant told him to stop, and then told him to leave. The landlord's son wanted to re-program the tenant's TV box, and the tenant told him to leave. The landlord's son told the tenant to move out, said he would give the tenant 30 days notice. About an hour later, the landlord arrived with a written note to evict, but not a legal form.

The tenant tried to have a one-on-one conversation with the landlord and then all 5 of the landlord's family showed up on the balcony screaming at the tenant to move out, and that's when the neighbour came out. The next day, coincidentally, the internet was turned off and hasn't been working since. The tenant was in hospital for 34 days and there were no problems with the internet until he returned home.

The tenant has tried to be peaceful, and testified that he has never been intimidating or aggressive. On April 16, 2017 the tenants' family was in bed when the landlord's family started banging, moving kitchen chairs, and being after 10:00 pm the tenant banged on the wall. Then 2 or 3 of the landlord's family started jumping, banging and screaming to make as much noise as they could. The tenant phoned the landlord and her daughter answered the phone. The tenant asked to speak to the landlord but the daughter refused and said they could do whatever they wanted because it was their house. The tenant denies swearing at the landlord's daughter.

The landlord's testimony is incorrect; the landlord was not present when her son was in the rental unit, and he was the aggressor. The tenant was told that neighbours pay \$200.00 per month more for rent, and the landlord wants to raise the tenant's rent. Since the day of the movie issue, the landlord's family has gone out of their way to bother the tenant and his family. Loud stomping is daily now and the landlord has even moved their exercise machine over the tenant's living room.

The tenant seeks an order cancelling the One Month Notice to End Tenancy for Cause and wants the internet and cable restored.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

Firstly, I find that the landlord has failed to establish any illegal activity. The landlord testified that since smoking is prohibited on the property, that is illegal, however illegal activity under the *Act* is generally reserved for activity that is against the law, not against the tenancy agreement. Further, the landlord has not provided any evidentiary material and I do not have a copy of the tenancy agreement.

With respect to the other reasons for issuing the notice to end the tenancy, the landlord testified that the tenant swore at her daughter on the phone, but that is disputed by the tenant. Where it boils down to one person's word over another, the allegation has not been proven.

The landlord also testified that the tenant was aggressive and intimidating. However, the tenant disputes that and both parties described a scenario wherein a heated argument ensued over rented movies ordered by the tenant's 6 year old daughter. The tenant testified that the landlord's entire family was on the balcony yelling at the tenant who was alone.

The landlord's witness testified that the tenant was in attack-mode, however the tenant also testified that the witness didn't arrive until well after the conversation started, so I am not convinced that the witness had all of the information. The landlord did not dispute that all of her family were on the balcony yelling at the tenant.

The landlord also alleges that the tenant has been smoking on the property, which is also denied by the tenant, who says he doesn't smoke cigarettes, and I accept that. The tenant got out of hospital and smoked a marijuana cigarette. Although that is not legal yet in this Country, there is no evidence that the tenant doesn't have a license allowing it, and smoking one does not constitute a reason for ending a tenancy. The landlord also testified that her son is highly allergic, and I accept that. However, the tenant also testified that once he did so, the landlord asked him not to

and he never did it again. I don't accept that that was a reason for the landlord serving the notice to end the tenancy for cause.

The landlord testified that she is not comfortable with having a tenant who is aggressive, but I am not satisfied that the tenant was the only aggressor, or that the landlord or her family did anything to mitigate the circumstances. The parties have a contract, and a landlord cannot end it except in accordance with the *Residential Tenancy Act*, and must be able to establish sufficient cause. I am not satisfied that the landlord has established that the tenant has significantly interfered with or unreasonably disturbed the landlord or seriously jeopardized the health or safety or lawful right of anyone.

### Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated April 26, 2017 is hereby cancelled and the tenancy continues.

The balance of the tenants' application is hereby dismissed with leave to reapply.

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: June 01, 2017

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Residential Tenancy Branch