



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNC

### Introduction

This hearing dealt with the Tenant's Application for dispute resolution requesting more time to make the application and an order to cancel a Notice to End Tenancy for cause issued by the Landlord (the "Application").

An Agent for the Landlord and an Advocate for the Tenant appeared at the hearing. The Advocate for the Tenant was her daughter-in-law. The Tenant did not appear at the hearing and was represented by her Advocate. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Preliminary Issues

The Tenant spelled the first name of the Landlord using only his initials in her Application. The actual name of the Landlord was provided by the Agent and the style of cause has been amended accordingly.

The Advocate for the Tenant had attempted to submit evidence late, a day or two before the hearing. The Agent explained the Advocate tried to fax the evidence to her, but the Landlord's fax machine was not functioning correctly. I did not have the evidence before me at the hearing and it arrived following the conclusion of the hearing, and therefore, it was not considered in evidence.

Issue(s) to be Decided

Should the Tenant be allowed more time to make the Application to cancel the Notice to End tenancy?

Should the Notice to End Tenancy be cancelled?

Background and Evidence

The first issue dealt with at the outset of the hearing was the issue of the Tenant filing late to cancel the Notice. The Agent for the Landlord testified she served the Tenant in person on April 7, 2017. Under section 47 (4) of the Act, the Tenant had 10 days to file to dispute the Notice. The Tenant filed on April 26, which is nine days after the deadline to file. It is clear that the Advocate actually filed the Application on behalf of the Tenant.

The Advocate for the Tenant testified that the Tenant did not comprehend the importance of applying to cancel the Notice in the time limits set out in the Notice to End Tenancy. The Advocate explained the Tenant had a hard time contacting her. The Advocate argued that the Tenant had a severe addiction to alcohol which affects her ability to comprehend legal matters. The Advocate testified that the Tenant does not seem to comprehend the significance of the Notice.

The Agent for the Landlord agreed that the Tenant has a significant problem with alcohol. The Agent testified that the Tenant is still driving and she has spoken with her. Although she testified that the Tenant is in poor health physically, the Agent argued that she was not aware that the Tenant lacked capacity to deal with legal matters.

After hearing this testimony I allowed the hearing to proceed on the merits. My decision regarding the time to apply and the merits of the matter is below.

The Agent testified that the Tenant has been given two previous Notices to End tenancy. The Agent testified that she has had to deal with the Tenant and the Tenant's former spouse on many occasions. The Agent testified that the former spouse of the Tenant is a major contributor to the problems in the tenancy. The Agent testified that the Tenant and her former spouse still drink together and then get into fights.

The Agent testified it got a little bit better when the former spouse left the rental unit around 2008, after the Tenant asked the Landlord to remove him from the tenancy agreement; however, the former spouse still continues to visit the rental unit property and the pattern of behaviour simply keeps repeating. The behaviour has been ongoing

for many years and is affecting other occupants at the rental unit. The Tenant and her former spouse drink together and then get into a fight. This disturbs other occupants at the building. The police have attended on several occasions. The Agent has given the Tenant two warning letters, which were before me in evidence. There were two prior Notices to End tenancy; however, these were from several years ago and dealt with late rent payments.

The Agent testified that the latest noise incident occurred on or about April 6, 2017. The Agent testified that other occupants woke her up around 3:00 am saying the Tenant and her former spouse had been drinking and fighting, and the police were attending again.

On April 7, 2017, the Landlord issued a 1 Month Notice to End Tenancy for Cause, alleging the Tenant, or a person permitted on the property by the Tenant, has significantly interfered with or unreasonably disturbed another occupant at the residential property. The Landlord also claimed the Tenant, or a person permitted on the property by the Tenant, have been engaged in illegal activity. The Agent explained the illegal activity alleged was smoking marijuana.

In evidence the Landlord submitted a letter from an occupant at the building dated May 2, 2017. The occupant explains the Tenant has disturbed them several times. For example the occupant says they are constantly fighting and yelling so loud he has to turn his TV up to cover the noise. He states that despite the building being quite soundproof (compared to other buildings he has lived in), the Tenant and her former spouse would have to be unusually loud to be making this type of noise. The occupant further writes he has been woken up by their noise, that on occasion he has worried the Tenant sounded like she was in distress, and that he has had to call the police at least twice to deal with the noise.

The occupant writes that after the former spouse has left and stays away for a while, things are a bit better, and seem quieter. Although he further explains that the Tenant continues to sneak the former spouse back into the building and then the fighting and noise return. He writes that the Tenant now will sneak the former spouse out of the building when the police arrive, so he is concerned that not even the police will be of much help in the future. He writes that during the last instance of fighting, the police had to attend the building three times and he was up at 3:00 am due to the noise.

Another Occupant ("Occupant two") wrote a letter on May 1, 2017. She complains about the Tenant and her former spouse constantly getting drunk and fighting, which keeps her up at night. Occupant two writes she has complained to the Landlord many times about this. She writes the police have removed the former spouse several times,

but he always makes his way back into the building sometime afterwards, and the drinking and fighting start again. Occupant two says this has been going on for years and sets out they will be forced to move if this behaviour does not stop.

The Agent for the Landlord testified that the Tenant also has a vehicle parked at the building which she will drive even when she is apparently impaired by alcohol. The Agent was concerned that the Tenant might hit and injure someone.

The Agent provided in evidence a warning letter to the Tenant dated January 3, 2016, setting out it was a second warning letter about fighting and noise at the rental unit. The letter identifies the Tenant's former spouse as the person the Tenant is constantly fighting with. There are references to the police having to attend three times in one week. The Agent explains the behaviour is, "totally not acceptable."

The Agent also included a warning letter from December 2014, which explains to the Tenant that she and her former spouse are disturbing other renters. The Agent cautions this can lead to the Tenant being evicted.

The Agent testified that she had given the Tenant numerous verbal warnings about her behaviour.

The Advocate for the Tenant submitted that two warnings do not make this a significant interference. She argued the Landlord submitted no police reports and that the letters from other renters were not notarized.

The Advocate explained she spoke with the Agent for the Landlord and they agreed they would try and resolve the issues. She testified that no agreement had been reached about the Tenant moving out.

The Advocate wanted to help the Tenant move to a more suitable location and was working with various agencies to find alternate accommodation for the Tenant. The Advocate explained she and the Agent came to an agreement that the former spouse would not be allowed on the premises, that the Tenant would give up her car and the Landlord would pay to change the locks that provide access to the rental unit so the former spouse could not come in. The Advocate testified she felt this is where the issues had been left. The Advocate explained the Tenant was an alcoholic that needed treatment and was having difficulty finding different housing she could afford.

The Agent for the Landlord had prepared a letter for the Tenant which explained that the effective date of the Notice to End Tenancy had been agreed to be extended to the end

of June 2017, that the Tenant agreed her former spouse would not be allowed in the rental unit for any reason, and that the Tenant gave up parking her vehicle at the property because it was leaking oil. The letter was dated May 12, 2017, and contained a statement that it was read and understood by the Tenant and was signed in agreement by the Tenant.

The Agent further testified that the Tenant had paid rent for all of June but was given a receipt for use and occupancy only.

The Agent testified that since the letter was signed there have been reports of the former spouse being at the residential property and that the Tenant continues to drive her vehicle. The Agent did say that the reports of the former spouse being at the property were provided to her second hand.

The Advocate explained that the letter did not indicate the Landlord and Tenant had agreed to a mutual end of the tenancy. The Agent and the Advocate did try and discuss some form of settlement during the hearing, but were unable to reach a mutual agreement.

### Analysis

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

I dismiss the Application of the Tenant, as I find the Landlord has cause to end the tenancy and the Notice should not be cancelled, for the following reasons.

The Notice was issued pursuant to section 47 of the Act, which sets out in part:

#### **Landlord's notice: cause**

**47** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(d) 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 of the residential property,

- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
  - (i) has caused or is likely to cause damage to the landlord's property,
  - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
  - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- ...

[Reproduced as written.]

Based on the testimony of the Agent and the written submissions of two occupants, I find that the Tenant and a person she has permitted on the residential property have unreasonably disturbed other occupants at the property. I further find the Landlord has proven that the Tenant and her former spouse have been drinking and fighting on a consistent basis and this, as well as the requirement to have police attend on more than one occasion, has seriously jeopardized the lawful right of other occupants to quiet enjoyment of the rental property.

I find there is persuasive evidence that this has been an ongoing pattern with the Tenant and her former spouse, and that the Landlord has provided more than adequate warnings to the Tenant.

Having made this finding, it is not necessary for me to deal with the allegations of illegal activities.

Nevertheless, I also find that the Tenant has filed outside of the statutory time limit to make an Application to dispute the Notice. I find the Tenant provided insufficient evidence that she lacked capacity to understand that these time lines were important. The time limits are set out in the notice to end tenancy and the Tenant had been warned several times about improving her behaviour. Under section 47(5) of the Act, the failure to apply on time to dispute the Notice provides a conclusive presumption that the Tenant has accepted the end of the tenancy. I find there was insufficient evidence that

would allow me to extend the time limit to apply due to exceptional circumstances as required under section 66 of the Act and as explained in Policy Guideline 66 to the Act.

For these reasons, I find that the tenancy must end and the Tenant must move out.

Pursuant to section 55(1) of the Act, I issue an order of possession to the Landlord effective at **1:00 p.m. on June 30, 2017**. This order must be served on the Tenant and may be enforced in Supreme Court.

### Conclusion

I find that the Tenant and a person she has permitted on the residential property have unreasonably disturbed other occupants at the property, and that the Tenant has failed to apply to dispute the Notice to End Tenancy. I find that the Notice to End Tenancy should not be cancelled and that by failing to file to dispute the Notice on time, the Tenant is conclusively presumed to have accepted the end of the tenancy, in any event.

Under section 55(1) the Landlord is granted an order of possession effective at **1:00 pm on June 30, 2017**.

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 Act.

Dated: June 05, 2017

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Residential Tenancy Branch