



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DOLE ENTERPRISES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OPC, FF

### Introduction

In the first application the tenant seeks to cancel a one month Notice to End Tenancy for cause dated December 9, 2017. The Notice alleges that the tenant or person she has permitted on the property has put the landlord's property at significant risk, that the tenant has caused extraordinary damage and that the tenant has breached a material term of the tenancy agreement and not corrected it within a reasonable time after being given written notice to do so.

In the second application the landlord seeks an order of possession pursuant to the Notice.

Ms. D.S. makes the preliminary objection that she has been named as the landlord in the tenant's application but she is not the tenant's landlord.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Does the evidence presented at the hearing show that there are good grounds for ending the tenancy under any of the three categories listed in the Notice?

### Background and Evidence

The rental unit is a two bedroom apartment in a 31 unit, three floor apartment building.

The tenancy started in August 2017. The monthly rent is \$1080.00 plus \$10.00 for parking. The landlord holds a \$540.00 security deposit.

Ms. D.S. testifies that in early November the tenant said her son was staying with her and she needed another key. Ms. D.S. gave the tenant a form to fill out for her son to apply to be a tenant. Ms. D.S. says the form was not filled out properly. She says the son stayed and was causing trouble by wedging open a door to the parking area. She found the patio door unlocked on one occasion. She considers the son hangs out with bad people in the neighbourhood.

The tenant denies the son was wedging open doors. She says her son moved away in late November and does not reside there anymore.

Ms. D.S. says that the tenant damaged two bi-fold doors in the rental unit. Each had a small hole or dent. She gave the tenant notice to repair the damage. She says that when she inspected again, the damage, though repaired, had not been repaired to her satisfaction. In addition, there was a new and much larger hole in the bedroom door, at about foot level.

The tenant says it was likely the movers who caused the dent in one bi-fold. She says the other bi-fold merely had a fingernail sized chip out of it. She hired and paid a nephew to conduct the repairs. She says she noticed there was a dent in the bedroom door and so her nephew repaired that as well.

### Analysis

#### Landlord Misnamed in Tenant Application

It is clear that the tenant's landlord is the corporation and not Ms. D.S. It is also clear that Ms. D.S. is a director of the landlord and is the contact person for landlord tenant matters in this building. I find that there is no confusion caused by the tenant's misnaming and no injustice would be done by amending the tenant's claim to add the corporation as a respondent.

### Putting Landlord Property at Significant Risk

It is not clear what conduct the landlord alleges regarding this ground. I assume it is the allegation that the tenant's son wedged a door to the parking lot open. While such action is potentially threatening to the security of the building, in the circumstances of this case I do not consider that it reaches the level of putting the landlord's property at "significant risk" sufficient to warrant eviction. Though there is no basis for approving such conduct, I am not persuaded the tenant authorized or even tacitly approved of such conduct.

This ground for the Notice must fail.

### Extraordinary Damage

There is no evidence of "extraordinary damage." The landlord presented a photograph of a small hole or dent in a bi-fold door. That damage is consonant with an accidental bumping of the door, as suspected by the tenant. It is not extraordinary damage. There is no objective evidence of the other damage. The testimony does not persuade me it approaches the level of "extraordinary damage."

This ground for the Notice must fail.

### Breach of a Material Term Not Corrected After Written Notice

It is not clear what material term the landlord refers to; having a second occupant or failure to repair damage.

Clause 13 of the written tenancy agreement provides that only the persons listed at the start of the tenancy agreement may occupy the premises past fourteen days and if the tenant wishes to have another occupant she must first obtain the landlord's permission. The clause states that a breach of this term is a material breach of the tenancy agreement.

In this case the tenant did request approval for her son to be an occupant. In response, the landlord provided her with a form for the tenant to obtain approval to have her son as tenant. Being a tenant of a landlord is a position quite different from being an occupant in a rental unit. In

my view the landlord has not fairly dealt with the tenant's request to have her son as an occupant of, as opposed to a tenant in this two bedroom suite and cannot rely on clause 13 to maintain that there has been breach of a material term of the tenancy agreement.

In any event on the competing evidence it has not been shown that the tenant's son is still occupying the rental unit and has not moved to live with his father, as the tenant alleges, thus complying with the landlord's written notice to cure the breach. If it is him that the landlord has seen near the apartment building that is not definitive proof that he is living in the rental unit as opposed to visiting as a guest.

If the material term alleged in the Notice is in regard to the door damage, the tenant has effected repairs to the damage as required by the landlord. There is no material breach.. If the landlord is dissatisfied with the level of repair that is a different matter and the landlord is entitled to make a claim for compensation or further repair.

This ground for the Notice must fail.

### Conclusion

The tenant's application is allowed.

The landlord's claim for an order of possession is dismissed.

If it is the tenant's intention to have her son occupy the premises with her again she should make the request under s. 13 of the tenancy agreement. In my view it is implicit that the landlord's permission for a tenant to have another occupant cannot be unreasonably withheld, though I make no determination about this particular circumstance or this particular occupant.

As the tenant's claim has been successful she is entitled to recover the \$100.00 filing fee for this application.

I authorize her to reduce her next rent due by \$100.00 in full satisfaction of the fee.

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: January 24, 2018

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Residential Tenancy Branch