



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC, FFT

### **Introduction:**

The Application for Dispute Resolution filed by the Tenants seeks an order to cancel the one month Notice to End Tenancy dated October 1, 2019

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was served on the Tenants by posting on October 2, 2019. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served the landlord in late October. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided:**

The issues to be decided is whether the tenants are entitled to an order cancelling the one month Notice to End Tenancy dated October 2, 2019?

### **Background and Evidence:**

The tenancy began in 2016 or 2017. The latest tenancy agreement is between the landlord and JV and provides that tenant(s) would pay rent of \$1350 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$675 on August 1, 2017.

### **Grounds for Termination:**

The Notice to End Tenancy identifies the following grounds:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant has engaged in illegal activity that has, or is likely to:
  - damage the landlord's property
- Tenant has assigned or sublet the rental unit/site without landlord's written consent
- Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement

Analysis:

After carefully considering all of the evidence I determined the landlord failed to establish sufficient cause to end the tenancy for the following reasons:

- The landlord has the burden of proof to establish sufficient cause to end the tenancy on a balance of probabilities based on the grounds set out in the Notice to End Tenancy.
- The landlord submitted there are an unreasonable number of occupants in the rental unit and the rental unit was rented to one person only. The rental unit has three bedrooms. The tenant and his girlfriend live in one bedroom, a roommate lives in each of the other two bedrooms. I determined that 4 occupants is not an unreasonable number of occupants. The landlord failed to prove there was another roommate living in the garage.
- The landlord failed to prove that the tenant has engaged in an illegal activity that has or is likely to damage the landlord's property. I agree with the submission of the landlord that the rental unit is unkempt especially the balcony which has a large number of cans and other debris placed in plastic garbage bags. I do not accept the submission of the tenant that he does not have to remove these garbage bags as the steps are defective. The tenant failed to prove the steps were defective. Further, the tenant could easily remove them by taking them out the front entrance. However, the landlord failed to prove that the tenant engaged in an illegal activity.
- I do not accept the submission of the landlord that the tenant has sublet or assigned the rental unit. The tenant has lived in the rental unit at all material times. The presence of roommates does not amount to an assignment or sublet. The landlord may have had grounds to end the tenancy for breach of a material term of the tenancy agreement if there had been a term in the tenancy

agreement that the tenant was the only occupant allowed in the rental unit. However that issue is not before me in this hearing.

- I do not accept the submission of the landlord that she has grounds to end the tenancy on the basis the security or pet damage deposit was not paid within 30 days as required by the tenancy agreement. The landlord testified she was unaware that the tenant had a dog. The tenant testified and provided evidence that his dog is a service dog. The tenancy agreement does not provide that the tenant is to provide a pet damage deposit.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord failed to establish sufficient cause to end the tenancy. As a result I ordered that the Notice to End Tenancy dated October 1, 2019 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

**This decision is final and binding on the parties.**

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: December 09, 2019

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Residential Tenancy Branch