



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

Dispute Codes: CNR, RR

## Introduction

In the Application for Dispute Resolution the Tenant requested authorization to reduce his rent for repairs, services, or facilities agreed upon but not provided. The Tenant did not provide any details regarding the nature of repairs that are required or the services/facilities that were agreed upon but not provided. I find that the lack of disclosure placed the Landlord at a significant disadvantage, as it prevented him from preparing a response to the Tenant's claim. As the Tenant did not submit any details regarding his application to reduce his rent for repairs, services, or facilities agreed upon but not provided, this portion of the his Application for Dispute Resolution is dismissed, with leave to reapply.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions to me.

## Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside.

## Background and Evidence

The Landlord and the Tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the Tenant indicating that the Tenant was required to vacate the rental unit on September 30, 2008.

The first reason on the Notice to End Tenancy that was submitted to the Residential Tenancy Branch has been altered. Specifically, the reason that should read "Tenant is repeatedly late paying rent" has been altered and now reads "Tenant is late paying rent owes \$250.00". The Landlord stated that he did not amend this portion of the Notice.

The Landlord presented the following evidence and arguments that the Tenant is repeatedly late paying rent:

- The Tenant did not pay his rent in May of 2008
- He considers that the Tenant was late paying rent in all the subsequent months after May of 2008, because he applied each subsequent rent payment to the rent that is in arrears.

Two of the reasons for ending the tenancy stated on the Notice to End Tenancy were that the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant, and that the Tenant has engaged in illegal activity that has, or is likely to, jeopardize the lawful right or interest of another occupant or the landlord.

The Landlord presented the following evidence and arguments that the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant, and that the Tenant has engaged in illegal activity that has, or is likely to, jeopardize the lawful right or interest of another occupant or the landlord:

- The Landlord was advised by another occupant of the rental unit that the Tenant had a loud party approximately 6 weeks ago, which resulted in the occupant contacting the RCMP
- The Landlord spoke with the RCMP officer who attended at the party, who advised him that the party was very loud and that he issued the Tenant a ticket as a result of the noise
- The RCMP officer advised the Landlord that it was uncommon to issue a ticket as a result of a noise complaint.

The Tenant presented the following evidence and arguments in support of the application to cancel the Notice to End Tenancy for Cause:

- He was not having a party when the RCMP attended his residence several weeks ago
- He was playing dice with his girlfriend at the time and they were playing music that was not particularly loud
- He was not given a ticket by the RCMP until after he loudly complained about the incident to the RCMP officer
- He was never advised by the Landlord or an agent for the Landlord that his noise was disturbing other occupants of the residential complex
- He was only advised on one occasion by the occupant living below him that he was being loud, at which time he turned down his music.

The Landlord acknowledged that he has never personally advised the Tenant that he is being too loud, although he stated that he believed his agent did advise the Tenant there had been noise complaints. The Landlord asked that his agent be called as a

witness regarding noise complaints regarding the Tenant, however attempts to contact the agent by phone were unsuccessful.

### Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the Landlord has provided insufficient evidence to show that the Tenant is repeatedly late paying rent. I find that the Tenant was late paying his rent in May of 2008, and that he may still owe rent for that month. I do not accept the Landlord's argument that the Tenant paid his rent late on each subsequent month, as the rent paid by the Tenant in each subsequent month was intended to pay rent for the month that it was tendered.

**Both parties should be aware that failing to pay rent for May of 2008 may be grounds to end this tenancy pursuant to section 46 of the Act, however it is not grounds to end the tenancy in these circumstances pursuant to section 47 of the Act, which is the section that the Landlord relied on in this situation.**

After considering all of the written and oral evidence submitted at this hearing, I find that the Landlord has provided insufficient evidence to show that the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant or that the Tenant has engaged in illegal activity that has, or is likely to, jeopardize the lawful right or interest of another occupant or the landlord, which is cause to end this tenancy or that the Tenant has engaged in illegal activity that has, or is likely to, jeopardize the lawful right or interest of another occupant or the landlord pursuant to section 47(1)(e) of the Act. In reaching this conclusion I considered the following factors:

- The Landlord submitted no evidence from any other occupant of the residential complex that indicates they were disturbed by noise emanating from the rental unit on any occasion
- Although the Tenant acknowledges that he received a ticket for being noisy several weeks ago, there is insufficient evidence to establish that the noise adversely affected the quiet enjoyment of other occupants of the residential complex or the Landlord
- Although the evidence shows that the Tenant was noisy on one occasion, there is insufficient evidence to show that this is a pattern of behaviour that justifies ending this tenancy
- There is insufficient evidence to establish that the Tenant has been notified that his behaviour was disturbing the Landlord or other occupants of the residential complex.

### Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47(1)(e) of the *Act*, I hereby set aside the One Month Notice to End Tenancy, dated August 22, 2008, and I order that this tenancy continue until it is ended in accordance with the *Act*.

Date of Decision: September 25, 2008

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