



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNC OPC FF

### Introduction

This hearing dealt with applications by the tenant and the landlord. The tenant applied to cancel a notice to end tenancy, and the landlord applied for an order of possession pursuant to the notice to end tenancy. The landlord and the tenant participated in the teleconference hearing.

The tenant stated that he only received the landlord's application and evidence in the evening on Friday, December 5, 2014. The tenant stated that he would have submitted evidence in response to the landlord's evidence, but he did not have time to do so. I informed the landlord that I would have to either exclude her evidence and proceed with the hearing or adjourn the hearing to allow the tenant more time to submit his evidence in response. The landlord elected to proceed with the hearing. I therefore excluded the landlord's evidence and proceeded with the hearing.

Both parties were given full opportunity to give testimony. I have reviewed all testimony. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

### Background and Evidence

The tenant rents a suite in the lower part of a house. The upper part of the house is occupied by other tenants of the landlord. On October 27, 2014 the landlord served the tenant with a notice to end tenancy for cause.

The notice indicated that the causes for ending the tenancy were as follows:

- 1) the tenant has
  - a. seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - b. put the landlord's property at significant risk;
- 2) the tenant has engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the landlord;
- 3) the tenant has not done required repairs of damage to the unit or property; and
- 4) the tenant has breached a material term of the tenancy agreement and failed to correct the breach within a reasonable time after written notice to do so.

#### *Landlord's Evidence*

The landlord stated that the tenant is destroying the house. She stated that she told the tenant many times not to smoke in the room, but when she entered his unit she found cigarette butts in his room. Further, the upstairs tenants complain about the smell of smoke.

The landlord stated that the tenant's dog poops everywhere and is damaging the fence. The landlord stated that the tenant left a ladder outside, as well as garbage that others have complained smells bad. The landlord stated that the tenant has a second dog in the house without permission, and the tenant cut a door without permission.

The landlord stated that the tenant tampered with the cable box. The landlord stated that the tenant destroyed a previous tenant's mail. The landlord stated that the tenant was playing with the hot water tank and the upstairs tenant got burned by hot water while showering.

#### *Tenant's Response*

The tenant denied the landlord's accusations. The tenant stated that the garbage and ladder at the side of the house belongs to the neighbour. The tenant stated that the previous tenants left garbage behind. The tenant stated that he keeps his trash inside until garbage day.

The tenant stated that the second dog does not live there, it belongs to the tenant's girlfriend. The tenant stated that he always cleans up after his dog, and the neighbour's dog is always going to the bathroom in the yard.

The tenant denied ever touching the hot water tank or smoking inside. The tenant stated that when the landlord saw cigarette butts in the rental unit, the tenant had smoked outside and then brought the ashtray back inside.

The tenant denied carrying out any illegal activity, putting the property at risk or damaging the property. The tenant stated that he did not touch the cable box. The tenant admitted that he put

an air conditioner in the window in the summer, but he removed it in the winter and there was no damage done. The tenant submitted that the landlord has not provided evidence to support anything she has claimed.

### Analysis

I find that the notice to end tenancy is not valid.

The landlord did not provide sufficient evidence to support any of the alleged causes for ending the tenancy. The tenant disputed all of the landlord's testimony. Disputed verbal testimony is not adequate evidence, in this case, to establish cause.

I cancel the notice to end tenancy dated October 27, 2014.

As the tenant's application was successful, he is entitled to recovery of his \$50 filing fee.

As the landlord's application was not successful, she is not entitled to recovery of her filing fee.

### Conclusion

The landlord's application is dismissed.

The notice to end tenancy dated October 27, 2014 is cancelled, with the effect that the tenancy will continue until such time as it ends in accordance with the Act.

The tenant is entitled to \$50, and he may deduct that amount from his next month's rent.

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 8, 2014

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Residential Tenancy Branch

