



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, CNC, CNR

### Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause and for orders for the landlord to comply with the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

I noted that the tenant provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities that she received from the landlords after the tenant served the landlords with her Application. The tenant also provided a written submission that indicated she was in dispute with the landlord's issuance of this Notice. Although the Application was not properly amended to indicate the dispute code related to disputing a 10 Day Notice, since a hearing had already been set to deal with the first Notice to End Tenancy and the tenant had served all of her documentation upon the landlords I found the parties had a reasonable expectation that this proceeding would also deal with the 10 Day Notice that was served upon the tenant. Therefore, I amended the tenant's application to deal with the 10 Day Notice.

### Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?
2. Should the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities be upheld or cancelled?
3. Is it necessary to issue orders for compliance to the landlords?

### Background and Evidence

The landlords and two co-tenants, the tenant and the tenant's daughter, executed a written tenancy agreement for a tenancy that commenced in February 2008. The rental unit is a two bedroom suite approximately 700 square feet in area.

### **1 Month Notice to End Tenancy for Cause**

On January 18, 2016 the landlords put a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) in the tenant's mailbox. The tenant received it the following day. The landlords indicated the following reasons for ending the tenancy on the Notice:

- Tenant has allowed an unreasonable number of occupant in the unit; and,
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Below, I summarize the landlords' reasons for issuing the 1 Month Notice and the tenant's responses.

The landlords submitted that the tenant's adult son has been occupying the rental unit with the two co-tenants. The landlords are of the position that if the tenant's son is residing in the unit a new tenancy agreement should be entered into and the tenant's son added as a tenant. Alternatively, the tenant should be required to pay more rent and/or utilities to reflect additional wear and tear on the property and greater consumption of utilities.

The landlords are of the position that if the tenant's son is not living in the rental unit the tenant should prove this by providing them with her son's address of residence but the tenant refuses to provide this information to them.

The tenant submitted that her son had rented a different rental unit from the landlords and that tenancy ended and now the landlords are trying to obtain confidential information concerning her son from her. The tenant feels drawn into the middle of the landlords' dispute with her son and refuses to provide the landlords with the information they are seeking. The tenant is of the position the landlords are trying to evict her now because she will not provide them with the information they want.

The tenant acknowledged that after her son lost his rental unit her son became homeless and he was staying in the rental unit for some time and that he continues to visit often while also staying with other people.

The landlords explained that the tenant's son owes them rent under his tenancy agreement and that at one point in time the tenant had been paying her son's debts but then she stopped so they want to obtain his address from her.

On January 17, 2016 the landlords sent the tenant an email that included the following statements:

The current tenancy agreement....states that the rental unit [address of rental unit] is only for the occupancy by [name of tenant and her daughter] and [name of tenant's son] is not included as a resident.

Please consider this email as a warning letter for [name of tenant's son] to move out or for [names of tenants] to provide an evidence that [name of tenant's son] is a guest. Evidence has to be in a form on his permanent address that [names of landlords] can verify. Deadline for either action is 12:00 pm, January 18, 2016.

As an alternative option, we can offer to sign a new rental agreement to include [name of tenant's son] as a legal occupant on a new terms: change in rent, damage deposit, portion of hydro paid by the tenants and length of agreement.

I noted that neither party provided a copy of the tenancy agreement as evidence for this proceeding. The tenant stated she could not locate her copy of the tenancy agreement. The landlords had a copy of the tenancy agreement and acknowledged that they did not provide a copy of it as evidence for this proceeding. The landlords described the tenancy agreement as being the standard agreement from the Residential Tenancy Branch and read from certain portions of the document. The portions they read are consistent with the standard terms that appear on tenancy agreements produced by the Residential Tenancy Branch.

### **10 Day Notice to End Tenancy for Unpaid Rent and Utilities**

Both parties provided consistent testimony that when the tenancy commenced utilities were included in rent. Then in October 2014 the landlords sought to have the tenant pay less rent but be responsible for paying 2/7 of utility bills. This was accomplished by way of an email exchange between the parties and the change was not accomplished by amending the tenancy agreement in writing or issuance of a Termination of Service or Facility in the approved form. Nevertheless, the tenant complied with the landlords request to pay rent and utilities separately.

On February 2, 2016 the landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the 10 Day Notice). The 10 Day Notice indicates that it was served by email and that it was issued because the tenant failed to pay utilities of \$168.99 that were demanded on February 2, 2016. The amount of utilities indicated on the 10 Day Notice are the sum of 2/7 of a hydro bill issued by BC Hydro on January 11, 2016 and 2/7 of a natural gas bill issued by Fortis on January 14, 2016. The tenant had submitted that the due dates for these two bills is February 2, 2016 and February 5, 2016 respectively, as seen on the utility bills, and that the landlords were premature in issuing an eviction notice based on these bills.

### **Orders for compliance**

The tenant requested that the landlords provide her with another copy of their tenancy agreement since she cannot locate her copy. The tenant also indicated that she is agreeable to formalizing their current arrangement of paying rent and 2/7 of the utility bills but would like to see the original tenancy agreement before doing so. The landlords were agreeable to this request.

The parties were strongly encouraged to reflect any changes or amendments to the tenancy agreement in writing, including signatures of both parties, or to enter into a new tenancy agreement with mutually agreeable terms. Failure to do so may result in the original tenancy agreement remaining in effect.

The tenant seeks to have the landlords stop requiring her to provide them with her son's permanent address or any other confidential information as she is being pulled into a dispute they have with her adult son. The landlords stated that an Information Officer with the Residential Tenancy Branch informed the landlords that they were at liberty to ask the tenant to provide such information. The landlords also stated that it was merely a request.

### **Analysis**

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

### **1 Month Notice to End Tenancy for Cause**

Although the landlords initially asserted that the tenancy agreement prohibits the tenant from having additional occupants, I find the landlords failed to provide evidence to

support this position. The landlords did not produce a copy of the signed tenancy agreement but submitted that the tenancy agreement is that which is produced by the Residential Tenancy Branch. I did not hear any evidence to suggest that an addendum formed part of the tenancy agreement. Thus, the only term in the tenancy agreement that deals with occupants and guests is the standard term this is to be included in all residential tenancy agreements. The standard term provides as follows:

**Occupants and guests**

- 9 (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
- (2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.
- (3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*.

[my emphasis added]

Based upon the above term, the landlord may not prohibit the tenant from having additional occupants unless the number of occupants is unreasonable. There is no other provision in the tenancy agreements produced by the Residential Tenancy Branch that prohibits the tenant from having an additional occupant. Therefore, if the landlords seek to end the tenancy the landlords bear the burden to prove that the tenant has an unreasonable number of occupants in the rental unit.

If I accept the landlords submission that the tenant's son is living in the rental unit with the two co-tenants then there are would be a total of three people residing in a two-bedroom unit. Not only is it quite common for three or four people to share a two bedroom unit, the landlords own submissions indicate that the rental unit can reasonably accommodate three people since they are willing to enter into a new tenancy agreement with the two existing tenants and add a third tenant. Accordingly, I find that the landlords have not proven that three occupants in this unit is an unreasonable number of occupants. Nor, is the tenant in breach of a material term of the tenancy agreement. Therefore, I find the landlords do not have a basis under the

Act or the tenancy agreement, as it is written, to end this tenancy and I cancel the 1 Month Notice.

Considering the landlords' submissions I am of the view that this dispute revolves around the landlords desire to receive more rent and/or utilities for this unit or create a new term restricting the number of occupants in the unit. However, unless both parties agree to change the existing tenancy agreement or enter into a new agreement the parties remain bound by the terms they originally agreed upon.

### **10 Day Notice to End Tenancy for Unpaid Rent and Utilities**

Under section 46 of the Act, where a tenant is required to pay utilities to a landlord the landlord may treat the unpaid utilities as unpaid rent and issue a 10 Day Notice to End Tenancy if the tenant has failed to pay the utilities within 30 days of receiving written demand for payment.

In this case, I have significant reservations that the tenant is required to pay the landlord utilities given the undisputed testimony that the tenancy agreement provides that utilities are included in rent. However, the tenant did not seek a determination as to whether she is required to pay the landlord utilities in lieu of reduced monthly rent, only that I find the 10 Day Notice invalid because it was issued prematurely. Given the tenant's request and that I was not provided copies of the tenancy agreement or Notices of Rent Increase or utility bills I make no finding as to the amount of rent and/or utilities payable by the tenant but the parties are strongly encouraged to formalize the arrangement with the appropriate documentation if they are both in agreement or revert back to the original agreement.

As requested by the tenant, I find that issuance of a 10 Day Notice on February 2, 2016 for utility bills issued by the utility companies in mid-January 2016 to be clearly premature. I am uncertain as to the date the utility bills were given to the tenant but considering the utility bills were issued by the utility companies January 11, 2016 and January 14, 2016 it is clearly impossible that the utility bills were given to the tenant more than 30 days before the landlords issued the 10 Day Notice. Therefore, even if the tenant is required to pay utilities to the landlords, the landlords were premature to issue the 10 Day Notice on February 2, 2016 and the 10 Day Notice is without basis under the Act. Therefore, I cancel the 10 Day Notice.

### **Orders for compliance**

With a view to avoid future disputes between the parties and given the landlords agreement to provide the tenant with another copy of the original tenancy, I order the landlords to provide the tenant with another copy of their original tenancy agreement as soon as possible.

I further order the landlords to cease requests for the tenant to provide the landlords with an address or other personal information concerning her son. As stated previously in this decision, I have found that the tenant is not precluded from having an additional occupant, including her son, reside with her in the rental unit and the tenant is not obligated under the Act to provide the landlord with personal information concerning her son. Further, as stated during the hearing, the landlords remain at liberty to pursue the tenant's son as provided under the Act; however, the tenant is not obligated to help facilitate that process.

### **Filing fee**

The tenant was largely successful in this Application and I award the tenant recovery of the \$100.00 filing fee she paid for this application. The tenant is authorized to deduct \$100.00 from a future month's rent payment in satisfaction of this award.

### **Conclusion**

The 1 Moth Notice and the 10 Day Notice have been cancelled and the tenancy continues at this time. Orders have been issued to the landlords with this decision. The tenant has been awarded recovery of the filing fee and she may deduct \$100.00 from rent otherwise payable to the landlords in satisfaction of this award.

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: March 11, 2016

---

Residential Tenancy Branch