



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Lantern Properties LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, O

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; her advocate; and two agents for the landlord.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

I note that towards the end of the hearing the landlord indicated that he did not intend to pursue a 10 Day Notice to End Tenancy for Unpaid Rent issued on August 4, 2016 until he heard the outcome of this proceeding.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Sections 47 of the *Act*.

Should the tenant be unsuccessful in seeking to cancel the 1 Month Notice to End Tenancy for Cause it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

### Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on September 8, 2015 for a 1 year fixed term tenancy beginning on October 1, 2015 for a monthly rent of \$850.00 due on the 1<sup>st</sup> of each month with a security deposit of \$425.00 paid.

Both parties submitted a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on July 2, 2016 with an effective vacancy date of August 2, 2016 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; put the landlord's property at significant risk and the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property; adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; and jeopardized a lawful right or interest of another occupant or the landlord.

The landlord submitted they have received a number of complaints about the tenant. These complaints include noise complaints; mistreatment of the tenant's child; the smell of crack cocaine; and the possibility that the tenant is selling illegal drugs out of her rental unit.

In support of these claims, the landlord has submitted 2 letters from other occupants. One letter is undated and speaks to the authour's belief that the tenant is verbally abusing her child. The second letter, dated June 8, 2016, is signed only by "Your tired downstairs neighbor". There is no indication of the identity of the complainant.

One of the landlord's agents submitted that he had provided the tenant with access to storage for her bike but she refuses to use and insists on put the bike in the lobby contrary to the rules of the building.

He also stated that he is aware of what crack cocaine smells like when being smoked. He states that he has smelled this aroma coming from the tenant's rental unit. He stated that people continually go to the tenant's belonging exchange items and leave all within a few minutes.

He stated the tenant's daughter continuously does not use the sidewalks and will walk through the lawn to get to the door and that she continues to play with and is damaging the sprinkler heads in front of the tenant's unit.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
  - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - iii. Put the landlord's property at significant risk;
- b) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- i. Has caused or is likely to cause damage to the landlord's property,
- ii. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- iii. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

In the case before me, the burden rests with the landlord to provide sufficient evidence to establish they have cause to end the tenancy. From the testimony of both parties, I find that while the landlord has provided sufficient evidence to establish certain issues of cause, I am not satisfied, however, that the landlord has provided sufficient evidence of the disturbance experienced by other occupants.

That is to say, I am not satisfied that landlord has failed to provide sufficient evidence to establish that any other occupants of the residential property have been significantly disturbed by the actions of the tenant. In addition, the landlord has asserted very specific illegal activity has been committed including the use and sale of illegal drugs and potential child abuse yet they have provided no record of any police involvement or reports being made to the Ministry of Children and Family Development.

As a result, I find the landlord has failed to establish sufficient cause to end the tenancy.

### Conclusion

For the reasons noted above, I cancel the 1 Month Notice to End Tenancy for Cause issued by the landlord on July 2, 2016 and order the tenancy remains in full force and effect.

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: August 22, 2016

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Residential Tenancy Branch