

## DECISION

Dispute Codes      MT, CNC

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking to cancel a Notice to End Tenancy for cause, issued to him by the Landlord.

The Tenant was ill and unable to attend the hearing, however, he was represented by two Advocates at the hearing.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have also sent a copy of this Decision to the Tenant's Advocates and request they read this Decision to him in its entirety.

### Issues(s) to be Decided

Should the Tenant be granted additional time to dispute the Notice to End Tenancy?

Is the Notice to End Tenancy valid or should it be cancelled?

### Background and Evidence

The Tenant filed his Application for Dispute Resolution past the 10 day period after receiving the Notice. Therefore, I must first determine whether or not the time limit to file the Dispute should be extended.

The Tenant is an elderly man, who has lived the rental unit for since 1995. According to the written evidence of one of his health care case managers, he has cataracts, was unable to read his Notice to End Tenancy and was unaware that he had a right to dispute the Notice.

Based on his limited vision due to the cataracts, I find that these are exceptional circumstances and allow the Tenant's Application to proceed. However, the Tenant is now aware that if he is served another Notice to End Tenancy, he has 10 days to dispute it, and his right to dispute any future Notice may not be extended again.

The Landlord issued the Notice to End Tenancy alleging the Tenant had significantly interfered with or unreasonably disturbed another occupant or the Landlord, and that the Tenant had put the Landlord's property at significant risk.

The evidence of the Landlord in support of the Notice was that the Tenant has accused other occupants in the residential property of stealing money from him. The Tenant has approached the Agent for the Landlord many times seeking information on these other occupants, however, the Agent for the Landlord has been unsuccessful in convincing the Tenant he is not able to give out this information because he is unsure of the occupants the Tenant is referring to. The evidence of the Agent was that the Tenant has increased his insistence in trying to locate these other occupants for the past several months.

According to the further testimony of the Agent for the Landlord, in the past the Tenant had trouble paying his rent on time and has enlisted someone to help him write his rent cheques. According to the Agent, the rent is now being paid in a timely fashion, although it is not the Tenant making out these cheques.

The Agent for the Landlord is also concerned that the Tenant spends much time in the subject rental unit with the drapes drawn shut during the day, and that he does not clean the rental unit to a reasonable standard. The Agent for the Landlord stated that the Tenant is sometimes confused or pale looking, and the Tenant is now convinced that items are being stolen from his rental unit as well.

The Agent has also had to allow the Tenant's health care workers into the building on several occasions, as the Tenant did not have a telephone to "buzz" people into the building.

The Agent grew more concerned when he found the Tenant's episodes of being upset were apparently increasing, and at one point, the Tenant accused the Agent of being involved in the alleged theft of the money from him.

These events led to the Landlord issuing the Tenant the Notice to End tenancy. Following receipt of the Notice, the Tenant threatened to throw himself off the balcony of the rental unit. The police had to attend and the Tenant was taken to a hospital for assessment.

The Advocates for the Tenant explained that the psychiatric assessment of the Tenant determined that he was not a danger to himself or anyone else and that his threat to jump off the balcony was a cry for help.

The Advocates testified that there is a mental health team actively working with the Tenant now and evaluating the best residential setting for him. They testified he has stabilized emotionally and is now receiving support help such as counselling and a cleaning service.

The Advocates for the Tenant also explained that he may be correct in that someone may have stolen money from him. They testified there is an active, ongoing police investigation into the matter and the Tenant appears to be missing a large sum of money.

The Advocates for the Tenant further explained that the Tenant has a sincere determination to live independently. The Tenant has accepted home support every two weeks and also understands he is on the borderline between living independently and requiring a move to a residence that offers some level of assisted living. The health care team is also ensuring he will have a phone in his unit so he can let people in, or use the phone in case of an emergency, or for general communicating purposes.

The Advocates for the Tenant also testified several times that they did not find the Tenant to be a threat to harm himself or other people.

Both Advocates for the Tenant and the Agent for the Landlord acknowledged that this is a difficult situation for the Tenant and all involved.

### Analysis

Based on the foregoing, the testimony and the evidence, and on a balance of probabilities, I find that the Notice to End Tenancy should be cancelled. Therefore, I order that the Notice to End Tenancy is cancelled and is of no force or effect.

While I find that the Tenant has caused the Landlord extra work, it is not clear that the Tenant has been unreasonably disturbing or interfering with other occupants in the property. There is no evidence, such as letters from other occupants, that support these claims. It also does not appear, from the evidence provided, that the Tenant is putting the Landlord's property at significant risk.

He has, however, disturbed the Agent for the Landlord to some degree and the Tenant must be aware that this behaviour must cease. The Landlord and the Agent for the Landlord are not the Tenant's insurers nor are they a police department to investigate his concerns. The Tenant must not return to the behaviour of disturbing the Agent for the Landlord on these issues and should continue to accept the help offered from his health care professionals.

The Tenant must also be aware that this Decision should be viewed as a last chance to improve his behaviour. If this behaviour continues to occur, or worse - escalates, the Landlord may have to issue another Notice to End Tenancy which might not be cancelled the next time, given that the Tenant now has been fully put on notice about his behaviour.

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: October 19, 2009.

---

Dispute Resolution Officer