



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to cancel a notice to end tenancy issued for cause.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Have the Tenants breached the Act, regulation or tenancy agreement?
2. If so, has the Landlord proven cause for ending this tenancy on January 31, 2011?

### Background and Evidence

I heard undisputed testimony that the two named Tenants to this dispute entered into a month to month tenancy agreement effective December 1, 2010. Tenant (1) has occupied the unit since June 1, 2006 and entered into a new tenancy agreement when Tenant (2) moved into the unit. The current rent is payable on the first of each month in the amount of \$1,035.00. Tenant (1) paid a security deposit of \$490.00 on June 1, 2006 which was transferred to this new agreement with an additional \$27.50 paid on November 22, 2010 to bring the security deposit total to \$517.50.

The Landlord testified that on December 21, 2010, Tenant (1) had a party and got into an argument with another tenant. A fight broke out between Tenant (1) and his guest which moved out in the hallway. The police were called and the Landlord heard that a knife was involved and Tenant (1) was removed from the building.

The Landlord stated that every one or two months this happens with Tenant (1) when he is drinking and the police are always called. She stated that he is nice when he is not drinking so they always give him more chances. She stated that she has had to move other tenants to different units to get away from Tenant (1) and his loud parties. She provided two breach letters in her evidence from years past and recalls that there was a breach letter issued to Tenant (1) in July 2010 but she cannot find a copy of it. She states that because of this last incident she feels two other tenant's health and safety has been put at risk so this is why the 1 Month Notice to End Tenancy was served to the Tenant.

Also, these Tenants sent their neighbor a letter. This neighbor approached the Landlord shaking and crying as she told the Landlord she felt this letter was a threat because there were what appeared to be drops of blood on the outside of the envelope. She provided a photocopy of this envelope and letter in her evidence.

The Agent testified that because of the art work design on the envelope it was received by the neighbour as a threat. He confirmed there have been ongoing complaints about Tenant (1) from other tenants over the years. He is a nice guy when he is sober so he is always given another chance. He confirmed that the complaints come in after the fact except for the incident which occurred December 21, 2010. By the time he was called to attend there were police everywhere. There was the emergency response team as well as an ambulance. He said the situation was "insane". There were people zap strapped and handcuffed and police with shot guns in the hallway. He confirmed it was Tenant (1) who was assaulted that evening in the hallway. There has been a history of arguments back and forth between the Tenants and their neighbor. The complaining tenants never contacted him during the alleged parties; they wait a few days and then make their complaints. He was the person who served the 1 Month Notice to the Tenants by placing it under the door on December 24, 2010.

Tenant (2) confirmed he did not send the Landlord a copy of his January 5, 2011 letter. He said he could not provide testimony about it because he does not remember what he wrote. He states that on the evening of December 21, 2010 he was in his room and he heard Tenant (1), their neighbour and her guest arguing and yelling in his living room. Then he saw that Tenant (1) was being beaten by the neighbour's guest. He stated that he had a document signed by the neighbour stating that the fight was not caused by Tenant (1) and was caused by her guest. He claims his letter to the neighbour was not intended to be a threat and it was just art work on the envelope. He confirmed he has a health condition that may cause someone to be concerned if they came in contact with his blood but that in no way was his artwork intended to look like blood.

The witness testified that on the evening of December 21, 2010 she had guests over and Tenant (1) was standing up for her when her daughter and her guest began to push her around. She confirmed that it was her guest that assaulted Tenant (1) that evening. She stated that she was upset after receiving the Tenants' letter as she thought the design on the envelope was blood which she interpreted as a threat because she is aware of the Tenants' medical condition.

I asked the Landlord how Tenant (1) would know that he would not be given another chance in this instance. She advised that he was given a breach letter in July 2010 that told him if there was another occurrence he would be evicted. I then asked why the neighbor was not given an eviction notice to which the Landlord advised the neighbor has only occupied her unit for three months and Tenant (1) has been there for several years. She stated that even though she has only been the manager for one year she has known Tenant (1) for eight years and knows that he has been causing problems throughout his tenancy.

Each participant was asked if they had anything further to add to their testimony and each one confirmed they had no further comments.

### Analysis

Section 47 of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

In this case the evidence proves it was the neighbour's guest who was engaged in the fight with Tenant (1) which resulted in an assault on Tenant (1). When issues arise involving residents and guest(s) from two different rental units the Landlord is not at liberty to pick and chose who is evicted based solely on the length of a tenant's tenancy.

While there may be a history of noise complaints or intoxicated fights with Tenant (1) the evidence supports Tenant (1) has always been given the opportunity to continue with his tenancy. In the absence of clear written notices that inform the Tenants that future occurrences would result in eviction, I find there to be insufficient evidence to support that Tenant (1) ought to have known that this incident would result in his eviction.

Upon consideration of all the evidence presented to me, I find the Landlord has failed to prove the cause for issuing the 1 Month Notice to End Tenancy issued on December 22, 2010 and the Notice is hereby cancelled.

I caution the Tenants that this cancelled Notice is deemed to be a written warning and if the Tenants are involved in future events that negatively affect the quiet enjoyment or safety of other tenants or the landlord the Landlord would be at liberty to serve a Notice to End Tenancy and seek an order of possession.

### Conclusion

The 1 Month Notice to End Tenancy for Cause dated December 22, 2010, is HEREBY CANCELED and is of no force or 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: January 26, 2011.

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Residential Tenancy Branch