



# 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 tenant to cancel the One Month Notice to End Tenancy for cause.

The tenant served the landlord in person with a copy of the Application and Notice of Hearing and the landlord confirmed receipt of this

The landlords' agent and witness appeared along with the tenant and the tenants' legal advocate. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the tenant entitled to cancel the Notice to End Tenancy?

### Background and Evidence

Both Parties agree that this month to month tenancy started on January 01, 1999. The rent for this unit is \$477.00 per month and is due on the first of the month.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy by posting it to his door on March 03, 2011. This Notice becomes effective on April 30, 2011. The Notice gave the following reasons to end the tenancy:

*The tenant or a person permitted on the property by the tenant has:*

- *Significantly interfered with or unreasonable disturbed another occupant or the landlord*
- *Seriously jeopardized the health, safety or lawful right of another occupant or the landlord*

The landlords' agent testifies that the tenant has verbally attacked another tenant on three separate occasions; twice in the elevator and once outside the building. The landlords' agent testifies that they did not know at first who the person was but he was eventually identified as this tenant. The other tenant called the police on January 15, 2011. The landlords' agent, when asked, did not know how this tenant was identified as the person who made the alleged assault on the other tenant. The landlords agent states he reviewed the security camera in the elevator after the first alleged assault and saw two men but one was wearing a cap and could not be identified. He states he requested the footage on February 28, 2011 for the second alleged assault but has not yet seen this.

The landlords' agent testifies that they had a meeting with the tenant on January 20, 2011 about the alleged assault and states the tenant told him he thought the other person was stalking him. The landlords' agent testifies that he assured the tenant the other person was not stalking him. The landlord testifies that the tenant has kept calendars for six years detailing when he was being stalked.

The landlords' agent testifies that the first complaint came in from the other tenant on January 15, 2011 and the second complaint came in on January 31, 2011. On February 28, 2011 the third complaint came in from the same tenant that this time he had been assaulted while crossing the crosswalk.

The landlords witness is the tenant who claims he was assaulted by this tenant. The witness testifies that he had never seen this tenant before and they met by chance when the witness entered into the elevator. He states the tenant immediately started accusing him of being in a conspiracy against him with other tenants to force him out of the building. He states the tenant was threatening in his voice and language and expressed himself in an intimidating, hostile and menacing manner. He states the tenant told him he would end our conspiracy and accused the witness of following him.

The witness testifies that the second event occurred in the elevator again when the tenant again accused him of being in a conspiracy against him this time with the manager of BC Housing. He states the tenant tugged at his pants and jacket and accused him of engaging in homosexual activities with the manager to get clothes and that the manager had purchased his clothes in exchange for sex. He claims this was all said in the same threatening and violent manner as the last time.

The witness testifies that the third encounter with this tenant happened when he was crossing the crosswalk outside the building. He states he was going in the opposite direction to the tenant and the tenant lunged at him and shoulder blocked him as if in a hockey game. He states this time the tenant walked away without saying anything but his manner was hostile and threatening.

The witness testifies that he is not in any conspiracy with other tenants or management and does not engage in sexual favors. He states he now feels unsafe living in the building and when accessing any common areas because of the tenants threatening behavior towards him.

The tenants advocate asked the witness questions concerning his age, weight and height. The witness states he is 53 years old, about six feet tall and weighs 175 lbs. The tenants advocate asks the witness where the tenant was standing when he entered the elevator. The witness states the tenant was facing the door and when he entered the elevator the witness states he stood against the wall. The advocate asks the witness about the tenants' behavior. The witness states the tenant had a menacing tone and spoke in a threatening manner. He states you could not mistake it and he was in fear of a violent assault. He states he assumed from this tone that the tenant would go to any lengths to stop the witness but he did not make an actual treat against him. The witness also states he stayed in the elevator as it only took approximately 10 seconds to go down and he was determined to hold his ground against the tenant.

The landlord requests that the One Month Notice is upheld and seeks an Order of Possession to take effect on the effective date of the Notice.

The tenants advocate states the tenant has resided in his unit for 12 years and has never had a complaint against him. She states the witnesses' testimony confirms that the tenant never made

any treats towards him and the landlord does not know for certain that it was this tenant in the elevator.

The tenant testifies that he was in the elevator one day when the witness came in. He states no words were spoken between them and the witness looked disheveled and just stared at him. He states they exited the elevator together and the witness stayed in the lobby but again no words were exchanged. The second time the tenant claims he was in the elevator and the witness came on and just leered at him. He states again there was no conversation between them. He states this time the witness was waiting outside the building for the tenant and he kept pace with him when he was walking to the garbage cans. At this time the tenant states the witness told him he was going to the station. The tenant testifies he walked to the cross walk and the witness kept pace with him the tenant states he said to the witness "if today's going to be a stalking day to just stop it". He states the witness told him he had already filed a complaint against him.

The tenant testifies that the witnesses comments are untrue he states he keeps a record of his activities each day and on January 15 and 16 he was at home all day only leaving to do laundry in the building. He also states he does carry a bag on his shoulder and when he walked past the witness his bag did connect with the witnesses shoulder but this cannot be construed as an assault. The tenant testifies that he attended a meeting with the landlords' agent and explained to them that this man was stalking him and staring at him. The tenant also states another tenant in the building called him over when he entered the building and told him that they wanted him to move out. The tenant states he is 73 years old and he never touched this witness or made any homosexual accusations or threats of any kind against him.

The landlords' agent concludes his testimony by stating the tenant has been assessed by a BC health coordinator and was asked to be assessed by a mental health person but he refused. The agent states they are trying to assist the tenant and they must protect the other tenants from any threats.

The tenants advocate concludes her statements and says the tenants' family doctor looks after the tenants medical needs. She states it is unreasonable of the landlord to try to evict this long term tenant without any firm evidence and his behavior does not substantially affect other tenants.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I have taken into account each Parties arguments and find the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy for cause based on the reasons given on the Notice. In this matter it is one person's word against that of the other and it is my decision that the landlord has not taken all the necessary steps to confirm the identity of the alleged assault or that an assault took place as described by his witness because he has not reviewed the second video footage taken in the lift despite asking for it nearly a month ago. The tenant does confirm he was in the lift with the witness but he denies any threatening behavior took place. Consequently when it is one person's word against that of another the burden of proof has not been met and the Notice is cancelled and the tenancy will continue.

### Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated March 03, 2011 is cancelled and the tenancy will continue.

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 22, 2011.

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Residential Tenancy Branch