



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

At the commencement of the hearing, the landlord indicated he had two witnesses to call upon. I confirmed that the witnesses were excluded from the proceeding until such time they were called to testify.

### Issue(s) to be Decided

Should the Notice to End Tenancy be upheld or cancelled?

### Background and Evidence

The tenancy commenced April 17, 2007 and the tenant is currently required to pay rent of \$629.00 on the 1<sup>st</sup> day of every month. On May 27, 2011 the landlord posted a 1 Month Notice to End Tenancy for Cause (the Notice) on the tenant's door. The Notice has a stated effective date of June 30, 2011 and indicates the reason for ending the tenancy is because the:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord submitted that this is the second dispute resolution proceeding involving a Notice to End Tenancy for Cause. The first proceeding dealt with a Notice issued on December 31, 2010 for the same reason as indicated on this Notice. The Notice under dispute with this application was issued following a fight between the tenant and another tenant living in unit #303 at the time.

The landlord testified that he received a call from another occupant of the residential property earlier in the afternoon of May 27, 2011 who reported that a chair had been thrown from the balcony of unit #303. The tenant, who lives on the ground floor below unit #303, called the landlord a couple of hours later to report the chair being thrown off the balcony above. The landlord stated that he told the tenant his "timing was way off" and that he had already heard about the chair being thrown off the balcony. Several hours later, around 8:00 p.m., the landlord was called to the residential property. The police had been called to deal with an altercation between the tenant and the tenant of #303. The landlord was later informed by a witness, who lived in unit #102 at the time, that the tenant had also threatened a visitor in the lobby area at the property and outside the front doors. The tenant and the tenant of unit #303 were both issued eviction notices. The tenant in unit #303 has since moved from the property and was one of the landlord's witnesses to be called upon.

The tenant testified that after the chair was thrown from the balcony he called the landlord. The tenant stated that objects continued to be thrown from the balcony including cigarette butts a beer bottle and somebody was spitting from the balcony. Since it appeared as though the landlord was not going to do anything about the behaviour in unit #303, the tenant went up to unit #303 to deal with the issue himself. The tenant of unit #303 apologized and blamed his guest for the bad behaviour. When the tenant was returning to his unit through the stairwell he was attacked from behind by the tenant of unit #303. The tenant acknowledged that immediately after the assault he found himself in the lobby and was dazed. He mistakenly thought he was going to be attacked again and he scared the lady who was in the lobby at the time. The tenant testified that he was put in the police car while the other tenant was located by the police. The tenant was asked by police if he wanted to lay charges but the tenant declined and just wanted to go to bed. The tenant was provided a card for victim services with a case file number. The tenant went to the paramedics the following day and then made a doctor's appointment pursuant to the advice offered to him by the paramedics.

The landlord called two witnesses and I have recorded their testimony, in brief, as follows:

Witness #1 – Tenant from unit #303

- Witness was not home when chair was thrown off balcony;
- Witness does not remember when he came home that day but he was sleeping when the tenant came to confront him;
- The tenant was aggressive and confrontational towards him;
- A fight broke out between the two;
- Witness does not recall where he was when the police came to talk to him;
- Witness was taken away by police and put in “drunk tank” but he was not that drunk; and,
- The tenant has intimidated the witness in the past when looking to purchase marijuana.

Witness #2 – Tenant from unit #102

- Saw chair thrown from unit #303 approximately 1:00 – 1:30 p.m.;
- Was coming home from shopping at approximately 7:30 – 8:00 p.m. when she saw tenant yelling and screaming up the stairwell that he was going to kill tenant from unit #303;
- Saw tenant scare the visitor in the lobby and outside;
- Tenant was hitting his own face and screaming;
- Police took both the tenant and the tenant from unit #303 away;
- Saw the police put handcuffs on the tenant of unit #303 only; and,
- Other tenants have expressed how uneasy they felt after the incident.

The tenant responded to the witness statements by pointing out the witness #1 is much taller and heavier than the tenant and in no way could he be seen as intimidating to him.

The tenant acknowledged he scared the visitor and later apologized to her for his conduct. The tenant also indicated that witness #2 could be biased towards him due to a dispute involving witness #2’s husband and that witness #2 appears to have some sort of relationship with the landlord.

In response, the landlord submitted that witness #2 does paid work for the landlord on occasion but that is the extent of their relationship.

Relevant documentary evidence considered in making this decision includes the previous dispute resolution decision; the Notice to End Tenancy; and photographs supplied by the tenant.

Analysis

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

In summary, the landlord submitted that the tenant has a pattern of disruptive behaviour and the tenant submitted that he was the victim on the May 27, 2011 incident. Based upon consideration of all of the evidence before me, I prefer the tenant's version of events, for the following reasons:

1. The tenant was provided a Victim Services card given to him by the RCMP on the day of the incident;
2. It is reasonable that the tenant would have been put in the police car while they interviewed him before the other tenant was located;
3. The tenant of unit #303 was taken away by the RCMP in handcuffs but not the tenant;
4. I found the testimony of the tenant in unit #303 to be less reliable because:
  - a. he alleges a mutual fight took place between the parties yet the witness could not recall when he came home that day or where he was when the police came to talk to him; and,
  - b. The tenant in unit #303 was put in the "drunk tank" but claims he was not that drunk.

In light of the above, I accept that it is more likely than not that the tenant was the victim of an assault on May 27, 2011.

Upon review of the previous dispute resolution proceeding, I note that the Dispute Resolution Officer found that the landlord did not establish that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord.

Given my findings above, and the outcome of the previous dispute resolution proceeding, I find the landlord has failed to establish that the tenant has a history or a pattern of disruptive behaviour that warrants an end to his tenancy. Therefore, I grant the tenant's request and cancel the Notice to End Tenancy with the effect that this tenancy shall continue.

### Conclusion

The Notice to End Tenancy has been cancelled and the tenancy shall 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: June 28, 2011.

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Residential Tenancy Branch