



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the Tenant requesting that a One Month Notice to End Tenancy be cancelled.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

Should the One Month Notice to End Tenancy be cancelled?

### Background and Evidence

The parties confirmed that they have a written tenancy agreement and that the tenancy commenced on December 01, 2010. The parties stated that the rent is \$375.00 per month and the rent is due on the first of each month. The parties did not provide a copy of the tenancy agreement, rather only a copy of the addendum to the tenancy agreement was provided. The Tenant still resides in the rental unit at this time.

The Tenant confirms that he received a One Month Notice to End Tenancy for Cause by personal service on October 31, 2011. The reasons listed on page two of the Notice served on the Tenant state that the Notice was issued because the “Tenant has engaged in illegal activity that has, or is likely to: adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.” The Tenant filed an Application to dispute the Notice within the time frames required by the Act.

The Landlord states that the Notice was issued after the Tenant threw a stuffed foam toy mini pumpkin the size of a softball at RB, a staff member. RB complained to the Landlord about the Tenant’s behavior which he categorized as violent and threatening. The staff member, RB, attended the hearing and stated that on October 27, 2011 when he was in conversation with another person at the building the Tenant threw the stuffed toy at him and it hit his chest. RB stated that he was not hurt. RB stated that he asked the Tenant why he had done this and the Tenant told him that he missed what he was aiming at. RB states that he interpreted this to mean that the Tenant was aiming at his head with the intent to knock off his glasses. RB states that he was very upset by this

and felt threatened by the Tenant and he told the Tenant to go away or he would charge him with assault with a weapon. RB states the Tenant complied and went away to his rental unit. RB states that later that day the Tenant came back downstairs and they spoke. RB stated that the Tenant told him that any smokers at the building should be six meters from the door or he will call the bylaw office. RB offered to give the Tenant the phone number for the bylaw office and the Tenant left. RB states that as he is a smoker, he took this as a further threat against him by the Tenant. RB confirmed that there have been no prior incidents with the Tenant, just the incidents on October 27, 2011 which he felt were aggressive, and threatening. The Landlord's position is that they issued the One Month Notice as this Tenant's behavior on October 27, 2011 is not acceptable. The Landlord states that the Tenant has breached the material terms of the agreement he signed at the start of his tenancy, as he has assaulted or threatened assault on their staff member, RB. The Landlord states that a single breach of this agreement, as stated in the agreement, is cause to end the tenancy. The Landlord requested an order of possession at the hearing.

The Tenant states that he does not categorize his joking around with RB as an assault and that he was not aggressive or threatening. The Tenant states that the building lobby was decorated on October 27, 2011 for Halloween and he was feeling spirited and thought it would be in good fun to flick the foam stuffed toy mini pumpkin at RB. The Tenant states that he thought RB would simply toss it back at him in the spirit of fun. The Tenant states that he was surprised by RB's reaction, but he could see how angry RB was and when RB told him to leave the lobby he went up to his rental unit away from RB. The Tenant states he later returned to the lobby to try to talk with RB with the intent to apologize and talk things over. The Tenant states RB was still very angry with him and upset to see him. The Tenant states that he told RB that he did not understand why he was so upset as it was just in fun, and that it's not like he "rats" RB out about smoking too close to the building. The Tenant states that he does not agree with RB or the Landlord that his behavior was a threat or assault or a breach of his tenancy agreement. The Tenant states that RB and the Landlord did not call the police about the alleged assault with a stuffed toy. The Tenant states that he has had no prior problems with RB or the Landlord. The Tenant states that if the Landlord has a zero tolerance policy then it should be consistently applied, as other tenants are smoking in the elevator or within six meters of the building and other tenants use foul and threatening language in the building. The Tenant wants his tenancy to continue and the Notice to be cancelled.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the parties' evidence that the Tenant was personally served with the One Month Notice to End Tenancy for Cause on Monday, October 31, 2011. However, I find that the One Month Notice to End Tenancy for Cause was not issued in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline. The reason of "illegal

activity" listed on page two of the Notice, which derives from section 47 of the Act, has not been proven by the Landlord. The Landlord has failed to prove that the Tenant has breached the Act, Regulation, or tenancy agreement.

I do not find that the Tenant has demonstrated violence or threat against RB. There is no dispute that the Tenant flicked or tossed a small stuffed toy in the direction of RB, however, this is a minimal incident. RB was not physically hurt by this, although he was upset by the incident. RB did not contact the police to report the incident and have the police determine if it was an assault, if charges could be pressed, and if a restraining order may be necessary. I do not find that RB has proven that the Tenant meant to injure or harm him. There is no evidence of any prior dispute or incidents between the Tenant and the staff member, RB. There is no evidence of any warnings to the Tenant about what behavior meets the Landlord's definition of threat, assault, or violence, to result in a material breach of the tenancy agreement. Different people can react in different ways, and playful behavior like the tossing of a small stuffed toy can be unwelcome and misinterpreted by others. I find that it is appropriate for the Tenant to receive a warning that the throwing of any objects, stuffed or otherwise, at anyone in the building will not be tolerated again and the Landlord may have cause to terminate the tenancy due to any further similar incidents caused by the Tenant. The Tenant should take this as a warning that such behavior can lead to his eviction.

Based on the above-mentioned reasons, I order that the One Month Notice to End Tenancy, served on October 31, 2011, be cancelled.

### Conclusion

I have granted the Tenant's request to cancel this Notice to End Tenancy.

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: November 28, 2011.

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Residential Tenancy Branch