



# 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.

The original hearing was adjourned and then reconvened in order to provide time to hear from all of the witnesses. Both parties appeared at originally scheduled hearing and the reconvened hearing. Both parties 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.

As a procedural issue, the tenant indicated that he is illiterate. During the hearing I read or explained certain key documents to the tenant, including a warning letter dated August 10, 2011, to ensure the tenant could respond to key documents submitted by the landlord into evidence.

### Issue(s) to be Decided

Should the Notice to End Tenancy be upheld or cancelled?

### Background and Evidence

The landlord is a provincial agency that manages subsidized housing units and provides various tenant support services to tenants. This tenancy commenced in March 2009 and the tenant pays subsidized rent of \$328.00 on the 1<sup>st</sup> day of every month. On October 26, 2011 the landlord personally served the tenant with a *1 Month Notice to End Tenancy for Cause* (the Notice). The tenant disputed the Notice within the time limit permitted by the Act.

The Notice has a stated effective date of November 30, 2011 and indicates the reasons for ending the tenancy are:

- the tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord; and,

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

### **Landlord's position**

The landlord submitted that the landlord has received numerous complaints from other tenants and staff about the tenant's behaviour. The landlord submitted that the tenant is a bully, aggressive, blames others for his behaviour, and calls people names. Due to the tenant's behaviour the landlord's staff have begun to approach the tenant in pairs as they fear for their safety. The landlord submitted that the tenant's behaviour is especially intolerable as many of the other tenants have fled abusive relationships. The landlord, through its support workers, had previously encouraged the tenant to partake in anger management programs but he declined the services. The landlord has offered the tenant space in another facility better equipped to deal with his issues but the tenant refuses to move to that facility.

The landlord spoke briefly of inappropriate behaviour of the tenant that took place 2010 whereby the police were called to deal with the tenant. A greater portion of the proceeding was spent hearing of more recent incidents that took place on July 1, 2011 (Canada Day); September 4, 2011 (the Garden incident); and October 12, 2011 whereby the police were called again to deal with alleged threats by the tenant. Below I have summarized these incidents.

August 13, 2010

The tenant was observed banging on another tenant's door. The Building Manager asked the tenant to stop at which time the tenant yelled and screamed at the Building Manager. The Building Manager called the police and the police had to talk to the tenant through his door.

July 1, 2011

The tenant was harassing a group of women gathered in the common area for a woman's only sleep-over and move-night event. The tenant was harassing them by being argumentative, using foul language, yelling, and telling another tenant she was not Canadian enough for the Canada Day event. The tenant refused to leave the women alone until he was escorted away from the area by the Building Manager. Four witnesses signed a written complaint with the landlord which was provided as evidence. The Building Manager and a tenant (referred to by initials JK) testified as to what that observed on that day.

On August 10, 2011 the landlord issued the tenant a "final warning" which the tenant acknowledged was read to him by the Building Manager. The letter speaks to the

incident that took place on July 1, 2011. It also refers to a breach letter issued to him on August 4, 2010, meetings with the Tenant Support Worker, and about ongoing conflicts between the tenant and the staff and other tenants since then. The letter informs the tenant that his behaviour is unacceptable and will not be tolerated. Further, if additional complaints were to be received the landlord would end the tenancy.

September 4, 2011

The tenant was observed taking vegetables out of a garden plot late in the evening. He was confronted by JK, who had use of that garden plot, and in response the tenant called her names and threw rocks at her. JK provided a written complaint to the landlord on September 6, 2011 and testified during the hearing. JK testified that she is frightened of the tenant but acknowledged that she chased the tenant back to his room and kicked his door.

On September 19, 2011 the landlord received a letter from a witness to the September 4, 2011 incident. The witness does not mention rock throwing but tells the landlord she is intimidated by the tenant and expressed concern that the tenant has been interfering with other's peace and quiet without consequence.

The landlord issued another letter to the tenant dated September 26, 2011 that the tenant did not acknowledge receiving except in the evidence package for this proceeding. The letter referred to an incident that took place on September 4, 2011. The letter indicates that the letter serves as his last warning letter and any more complaints will result in the landlord ending the tenancy.

October 12, 2011

The tenant saw JK in the common area, there was name calling, and the tenant threatened to have a female physically hurt JK as he did not hit women. JK went to the support worker immediately and they called the police together. The police spoke to the tenant and advised JK to avoid contact with the tenant. JK wrote a complaint letter to the landlord on October 14, 2011. Both JK and the tenant support worker testified at the hearing that JK was very upset after this incident and they decided the threats from the tenant warranted a call to the police.

The landlord provided various other written reports of swearing, yelling, and kicking of walls and objects by the tenant at various other times prior to the August 10, 2011 warning letter written by the tenant support worker and other staff. The landlord submitted that numerous other verbal complaints have been received from other tenants but those tenants will not put their complaints in writing.

### **Tenant's position**

The warning letter of August 10, 2011 was read to the tenant by the building Manager but he was not provided a copy of the letter. The tenant claimed that he has not received any other warnings.

The tenant has undergone anger management in the past and he has enlisted some techniques to help him deal with his anger such as counting to 10 and walking away. The tenant explained that he has suffered brain injury that has left him prone to getting angry and talking to himself. Faced with an eviction the tenant stated that he is willing to take more anger management classes in order to stay in his rental unit. The tenant is strongly opposed to moving to the other facility offered to him by the landlord because the other facility is located in Surrey.

With respect to the July 1, 2011 incident the tenant admits he was arguing with some of the other tenants but explained that he was expressing his opinion that his rights were being violated by being excluded from the Canada Day event. The tenant submitted that it was the Building Manager that was aggressive with him by grabbing him.

The tenant acknowledges pulling vegetables out of a garden at the end of summer but denied throwing rocks at JK. The tenant explained that he mistakenly thought it was a common garden for all tenants and that the tenant support worker had given tenants permission to take items from the gardens. The tenant called a witness (referred to by initials JP) who also testified that they were given permission to take items from gardens and that the gardens are not clearly marked. JP testified that she saw JK kicking the tenant's door after she chased him back to his unit.

The tenant support worker testified that the gardens are assigned to tenants who express interest in gardening; however, some garden area is for common use. The tenant support worker acknowledged that the site plan for the garden space is kept in the office. The tenant support worker denied telling tenants that they could take items from the garden as the plants were still growing.

With respect to the October 12, 2011 incident the tenant acknowledged that he and JK exchange unpleasant words to each other in the common area but he denied threatening JK. The police talked to him at the mailbox but did not arrest him.

The tenant called another tenant as a witness (referred to as DG) who submitted that problems for the tenant began when JK moved into the building. JK has coaxed other tenants to sign complaint letters against the tenant. DG has known the tenant for four years and knows him to be helpful and believes that he is incapable of hurting anybody.

The tenant submitted a document entitled "PETITION: in favour of [tenant] NOT being evicted from [name of building]". The document appears to be signed by approximately 17 other tenants on November 1, 2011.

### Analysis

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

Upon hearing from the parties and upon review of the documentary evidence before me I accept that the tenant's behaviour was unreasonably disturbing on July 1, 2011 and inappropriate on other previous occasions and that the final warning letter that was delivered to the tenant on August 10, 2011 was warranted. Having accepted the tenant was put on final warning that his behaviour towards staff and other tenants was unacceptable I find the issue to determine is whether the tenant unreasonably disturbed or significantly interfered with other tenants or the landlord after August 10, 2011.

After August 10, 2011 there were two incidents involving the tenant and JK. The first one being the incident in the garden that took place on September 4, 2011. I accept that the garden plot the tenant pulled vegetables from was for use by JK. However, upon hearing from the tenant, his witness, and the tenant support worker, I accept that there the garden plots are not clearly marked and there was less than clear information conveyed to the tenants about acceptable use of the certain gardens plots. Therefore, I do not find the act of pulling plants from the garden plot in itself sufficient to conclude the tenant was significantly interfering with another tenant use of the property.

I have considered the actions of the tenant and JK after the tenant was caught in the garden which amounted to disputed submissions that the tenant threw rocks at JK and undisputed submission that it was JK that was kicking the tenant's door. I find, on the balance of probabilities that both the tenant and JK acted inappropriately that evening.

The second incident involving JK was on October 12, 2011. Again, I was provided disputed testimony from the tenant and JK as to what was said exactly to each other. However, based upon the testimony I heard from both parties, I accept that unpleasant words were exchanged by both parties.

Upon hearing from JK, I found it very apparent that she was very upset about the garden incident and that she and the tenant have an acrimonious relationship. However, the disputed testimony does not satisfy me that she was threatened on

October 12, 2011 especially when I consider the police did not arrest, detain or charge the tenant. Therefore, I conclude that both the tenant and JK likely acted inappropriately towards each other that day.

In light of the above, I give little evidentiary weight to the incidents involving JK after August 10, 2011. In the absence of other documented incidents between August 10, 2011 and the date the Notice to End Tenancy was issued October 26, 2011 I find insufficient evidence the tenant has unreasonably disturbed or significantly interfered with other occupants or the landlord; or, put the health and safety of other occupants or the landlord at significant risk. Therefore, I cancel the Notice to End Tenancy issued October 26, 2011 with the effect the tenancy continues at this time.

As a cautionary note to the tenant: I find the final warning letter issued August 10, 2011 to be valid and remains in effect meaning any further incidents of disturbing or disruptive behaviour may be grounds for the landlord to issue another Notice to End Tenancy. Accordingly, I strongly encourage the tenant to seek assistance offered by the tenant support worker with respect to anger management counselling as I find it likely that the continuation of this tenancy is largely dependent on the tenant's ability to appropriately manage his emotions and anger in the future. I further encourage the tenant to avoid interactions with JK to avoid the potential for future disputes.

### Conclusion

The Notice to End Tenancy has been cancelled and the tenancy continues. The final warning letter issued by the landlord August 10, 2011 is valid and remains in effect. The tenant is encouraged to accept the landlord's offer to assist the tenant participate in anger management programs. The tenant is encouraged to avoid interactions with tenant JK.

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: December 16, 2011.

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Residential Tenancy Branch