



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, O, FF

### Introduction

This hearing was convened by way of conference call in repose to the tenants application to cancel a One Month Notice to End Tenancy, other issues; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch. The landlords did not provide their documentary evidence to the tenants. The tenants were given opportunity to request an adjournment to receive the landlords' evidence. The tenants requested that the hearing continue today and accepted the landlords evidence sent to the Residential Tenancy Branch. The tenants provided their evidence to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

Are the tenants entitled to have the One Month Notice to End Tenancy cancelled?

### Background and Evidence

Both parties agree that this month to month tenancy started on March 01, 2005. The tenant pays a monthly rent of \$1,213.62 plus 60 percent of the utilities. Rent is due on the first day of each month in advance.

The landlord and his wife testify that they are scared of the tenant and fearful when they have to collect rent. The landlord testifies that he served the tenant with a One Month Notice to End Tenancy in person on December 29, 2011. This Notice has an effective date of January 31, 2011 and gave three reasons to end the tenancy as follows:

The tenant or a person permitted on the residential property by the tenant has

- (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) Put the landlord's property at significant risk;

The landlord testifies that the tenant has caused problems at the rental unit and another tenant vacated his rental unit because of this tenant. The tenant was verbally abusive and the other tenant felt unsafe living in the rental unit. The landlord testifies that the other tenant told the landlord that this tenant was aggressive and out of control and picked fights with the other tenant when this tenant did not get his way. This other tenant gave notice and moved out in February 2011.

The landlord testifies that there was an incident in July or August, 2011. The landlord testifies that he went to the property and found the lawn mower he had purchased and left at the property for the tenant to mow the lawn, had been left out in the rain. The landlord testifies that he went to ask the tenant to put the lawn mower away so it did not get ruined when the tenant started to yell and swear at the landlord. The landlord testifies that the tenant threatened to throw the landlord off his balcony. The landlord

testifies he called the Police who attended and spoke to the tenant. The landlord testifies that the police told him there was little they could do and the landlord should serve the tenant with a One Month Notice before someone gets hurt. The landlord has provided a police file number for this incident.

The landlord testifies that there was another incident between this tenant and the new tenant (CK) living downstairs. The downstairs tenant's dog was barking in the day when this tenant came downstairs and threatened to kill the tenant and his dog. This incident was also reported to the police.

The landlord testifies that another incident happened between this tenant and the downstairs tenant. The landlord testifies that he was told to come to the unit by the downstairs tenant to witness what was going on. The landlord states the downstairs tenant was playing music on a Saturday morning when this tenant came down and complained about the music being too loud. This time this tenant called the Police and when the Police arrived they explained to the tenant that there was nothing wrong with the downstairs tenant playing his music on a Saturday morning. The landlord testifies that the tenant did not like that answer and he slammed the door in the landlord and the police officers face.

The landlord testifies that the tenant has damaged the septic tank and lines at the property because he parks his boat and car too close to the septic tank. The landlord testifies he had to have the septic tank repaired and the repair man told the landlord that the pipes were cracked because of heavy things parked there. The landlord states the tenant has been informed in writing on September 18, 2011 not to park close to the tank however the tenant continues to do so.

The landlord testifies that the tenant's brother brings his rig over and parks it in the neighbour's yard but runs a cable from the tenants unit to the rig to run Hydro to the rig. The landlord states that this is unfair on the downstairs tenant who has complained because the downstairs tenant pays 40 percent of the Hydro bills. The landlord testifies

that the tenant's brothers rig has also damaged the septic tank and the new cement laid is the same size as the wheel base of the rig.

The landlord requests that the tenant moves out of the rental unit by the date given on the Notice to End Tenancy.

The tenant's son testifies that his father was spoken to by the police about his father saying he would throw the landlord off his balcony. The tenant's son states his father had no intention of carrying out this threat and it was made during a heated argument with the landlord. The tenant's son states his father was told not to issue any threats and his father agreed not to do so.

The tenant's son testifies that the downstairs tenant's dog attacked his uncle's dog. This tenant's dog is a large dog and part wolf but the tenant is a dog lover so did not take any action against the downstairs tenant's dog. Later this same dog lunged at the tenant's daughter. The tenant's son testifies that his father went to speak to the downstairs tenant and told him if there were any more dog attacks he would have to kill the dog. The police told the tenants to have no more contact and his father respected this. The tenants son testifies that in December, 2011 the downstairs tenants dog attacked his sisters dog. The tenant and his daughter were shocked by this and went into their unit. The downstairs tenant turned loud music on which woke the tenant's son who states he went downstairs to ask the tenant there to turn his music down but the downstairs tenant would not answer the door so the upstairs tenant called the police. The police said it was not a police matter.

The tenants son states his father respects the police recommendations not to talk to the downstairs tenant and although the tenant and landlord have had heated arguments in the past these issues were all resolved. Now the landlord has served the tenant with this Notice and the reasons given in the Notice are not justified.

The tenant testifies that he was friends with the previous downstairs tenant and this tenant told him he was moving because he wanted to be closer to his daughter's high school.

The tenant's son testifies that when his father rented the unit in 2005 there was an agreement in place that his father would cut the grass if the landlord provided the equipment. The lawn mower the landlord provided was not in working order but his father repaired it and got it going. A few years later the neighbours built a house and the runoff from this house floods the lawn area because the new house sits a couple of feet higher. This makes the grass too wet to cut and the tenant asked the landlord for a weed eater to tackle the lawn when it became too high to cut with the lawn mower. The landlord bought a weed eater but would not leave it at the house for the tenant to use. The tenant testifies that the lawn mower broke down again and he asked the landlord to come and repair it. The tenant agrees he did leave it outside while he was waiting for the landlord to come and look at it. The tenant testifies that he eventually bought his own lawn mower to maintain the yard and keep the peace between himself and the landlord.

The tenant son testifies that the house is 55 years old and the septic tank is the original one put in the house. Septic tanks only have a 35 year life span. The pipes from the tank to the septic field do not run under the driveway but do run to the north side of the yard where no one parks. The tenant's son testifies that when contractors came into the yard last year to deal with the flooding issue their equipment damaged the pipes not the tenant's vehicle or boat. The tenant's son states the driveway is a solid concrete structure. The tenant's son states the tenant's boat is parked on plywood and parked on the Southside away from the septic field. The tenant's son agrees they did get a letter from the landlord about parking close to the septic tank and the tenant now parks his car and boat away from the edge of the tank to comply with the landlord's wishes.

The tenant's son testifies that his uncle is a rig driver and is in town for four days a month. The tenant states his uncle parks his rig next door and in order to trickle charge

his battery they run a cable from the tenants unit to the rig. This would use minimum power and the tenant's son states they have received no complaints about this prior to this hearing.

The tenant's son disputes the landlord's testimony that the landlords are scared to come to the unit to collect rent as the landlord has been coming to the unit without any issues. The tenant states he has had to put up with the landlord making complaints throughout his tenancy and states as part of his tenancy he is also entitled to quiet enjoyment.

The landlord calls his witness who is the tenant living in the downstairs unit. The witness testifies that the tenant's brother's dog was at the unit off lease, his dog went to smell the tenants brothers dog and she bit his dogs leg so his dog had to defend itself. The witness states he asked the tenant to ensure any dogs are kept on a lease. The witness testifies that a few weeks later he was coming home with his dog on a lease and a dog again tried to attack his dog. He states his dog did not bite anyone. He states his dog did bark at the tenant's daughter one time when she was coming down the stairs. The witness testifies the tenant told him to stop his dog barking so the witness states he put his dog inside his unit. The witness testifies that the tenant said he would kill him and his dog and the tenant started to run at the witness so the witness locked his door. The next day the witness states he called the police about this incident as he perceived this to be a strong threat against him.

The witness testifies that one morning he was playing music when the police came to his unit. The witness states the police told him it was fine to play music at that time but when the police went to speak to the tenant the tenant slammed his door. The witness testifies that since then, there has been no communication between him and the tenant but the tenant will bang on a wall and drop things on the floor late at night. The witness states he told the landlord that the tenant wants to control him and his dog and he can no longer live at his unit.

The tenants son cross exams the witness and asks the witness if any words have been spoken since the event. The witness replies that this is correct.

The tenant's son testifies that this is an old house which makes noise creaking at night. The landlord's son states nether he or his father drop things on the floor or bang walls at night as neither of them are up late. If any noise has been caused unintentionally then they apologise for this. The tenant's son also states the tenant did not slam the door in any ones face. The door is old and does not close properly and has to be forced closed.

### Analysis

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 reviewed the testimony and documentary evidence presented by both parties; the tenant does not dispute that he threatened to throw the landlord off the balcony however the tenant argues this was said in anger during an argument with the landlord and he had no intention of carrying out this threat. However, the landlord perceived this as a real threat enough to call the police. The tenant does not dispute that he threatened to kill the downstairs tenant's dog but argues that this was taken out of context and he meant only if the dog attacked anyone or another dog and then they would report the downstairs tenant's dog.

Having considered these arguments it is my decision that the tenant did utter threats which were perceived as real threats to the landlord and the downstairs tenant. The downstairs tenant also has a right to live in an environment free from harassment and threats and to enjoy quite enjoyment of his home. While there is little evidence to show that the tenant has caused any other disturbances, a threat alone against another tenant and the landlord is enough for a landlord to issue a Notice to End Tenancy for

cause. A landlord has an obligation under the *Act* to protect other tenant's rights to quite enjoyment of their rental unit. Both tenants agree that they no longer have any communication and the landlord agrees that there have not been any other threats made against the landlord. I also find as this argument between the tenants also concerns the other tenant's dog. Therefore, I am not prepared at this time to uphold the Notice to End Tenancy on this ground.

With regard to the landlord reasons given on the notice that the tenant has damaged the landlord property; I find there is insufficient evidence to support the landlord's claims that the tenant is responsible for damage to the septic system. The landlord's photographic evidence is unclear concerning the landlords claim that the tenant's vehicles, boat or the tenant's brother's rig caused this damage and the landlord has provided no other corroborating evidence to support this reason. With regard to the lawn mower being left outside the landlord has provided no evidence to show the lawn mower was damaged due to being left outside or damaged in any other way due to the tenant's actions or neglect. I am not prepared at this time to uphold the Notice to End Tenancy on this ground.

With regard to the tenants brothers rig; As this rig is not parked at the rental unit I am only prepared to deal with the issue of the Hydro being used from the tenants unit for the rig. I find it is unfair that the tenant uses Hydro from the house to power his brother's rig when the hydro bill is split between the two tenants. However this improper use of the Hydro is not a reason to end the tenancy. I would however caution the tenant to come to an amicable arrangement with the downstairs tenant concerning the use of the Hydro to his brother's rig if this usage continues.

Although there is insufficient evidence at this time to support the reasons given on the Notice to End Tenancy; the tenant now has written Notice that a repeat of this type of behavior may result in the tenancy ending.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated December 28, 2011 is cancelled and the tenancy will continue. As the tenant has been successful in setting aside the Notice, the tenant is entitled to recover the \$50.00 filing fee for this proceeding and may deduct that amount from the next rent payment when it is due and payable to the landlord.

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 20, 2012.

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Residential Tenancy Branch