



# 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 an Application for Dispute Resolution by the Tenant to obtain an Order to cancel a notice to end tenancy issued for cause.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### Issue(s) to be Decided

1. Has a valid 1 Month Notice to End Tenancy (the Notice) been issued and served to the Tenant in accordance with section 47 of the *Residential Tenancy Act* (the Act)?
2. If so, has the Landlord met the burden of proof to end this tenancy in accordance with section 47 of the Act?

### Background and Evidence

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Each of the Landlord's Witnesses provided testimony and the Tenant was provided the opportunity to question each Witness. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The parties confirmed this is a month to month tenancy that began on April 17, 2007. Rent is payable on the first of each month in the amount of \$615.07.

The Landlord affirmed that an incident occurred between the respondent Tenant and SG, a tenant of the building, on December 29, 2011, and as a result he issued the 1 Month Notice to End Tenancy for Cause and posted it to the Tenant's door on January 27, 2012. I asked the Landlord what spurred him to issue the Notice a month following the alleged incident of December 29, 2011 to which he advised he wanted to see if anything else would occur. The Landlord confirmed there were no other incidents

between December 29, 2011 and January 27, 2012 when the Notice was issued. I then asked why he issued the Notice when no other events occurred and he advised that it did not matter when he was giving the Notice in January as it would not be effective until the end of February 2012 so he felt there was no rush in issuing it.

The Landlord stated the Notice was issued because the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. He referenced two previous dispute resolution hearings which were held January 26, 2011 and June 28, 2011 both of which were convened to hear the Tenant's application to cancel notices to end tenancy and both of which were found in favor of the Tenant and the notices were cancelled.

The Landlord confirmed he does not reside in the building and he has received information pertaining to the December 29, 2011 incident from JB, who occasionally performs cleaning work for the Landlord and who lives on the third floor across the hall from the SG, who was involved in the incident.

The Landlord said the Tenant has a habit of confronting other tenants about once per year. He says the Tenant does not call the Landlord to come and correct problems and instead the Tenant goes and confronts the other tenants on his own. The Landlord confirmed this building, which has four floors and has thirty three suites, has had a bad reputation over the years with tenants who fight regularly but that they have been able to clean that up over the last six years or so. The Landlord concluded that the Tenant has a pattern of incidents over the years and he is concerned about the Tenant's behavior becoming aggressive.

The Tenant affirmed he received the Notice, on the morning of January 28, 2012, when he found it posted to his door. The Tenant confirmed there was an incident on December 29, 2011 involving himself and SG, which occurred after they had spent several hours together in SG's apartment drinking and playing video games. He advised that SG became very drunk and began to crack beer cans on his forehead. When he decided to leave he began to load his computer equipment back down to his apartment on the first floor, leaving his dog and other possessions to be retrieved on his second trip. When he returned a few moments later SG would not let him inside and would not give him his dog. He began to get concerned for his dog and started banging on the door and yelling. Then he called across the hall and asked JB to call 911. It was at that time that SG opened his door and the Tenant pushed his way in to get his dog, causing SG to stumble backwards.

JB provided affirmed testimony in which she confirmed she used to live across the hall from SG but has since moved to get away from these incidents. JB stated she heard everything that day and said it started in the afternoon and it kept getting louder and louder until the incident happened. She advised she was inside her apartment taking care of her spouse who was in bed sick. She did not open her door however she watched the incident unfold while she was looking through her mail slot. She stated she saw SG's door open and that she saw the Tenant twist and swing around and then saw SG step back, but she does not know if the Tenant hit SG. Then the Tenant was in the hall and yelled for her to call the police. Upon further questioning JB confirmed that she does not know if the Tenant hit SG. She stated that both the Tenant and SG were drinking, she could hear them swearing and yelling, and then she heard the Tenant screaming from the hallway at SG. She called the police, the Landlord, and SG's mother. She stated that SG has some health issues so she informs his mother when incidents occur that involve him. She stated the police arrived, spoke to both the Tenant and SG and that they wanted to take SG to jail however SG's mother talked the police into leaving him with her. She confirmed that she only ever hears these two when SG and the Tenant get together as they always get drunk.

In response the Tenant questioned the credibility of JB's testimony because she works for the Landlord and she had been found to be lying when she testified in a previous hearing. Specifically when JB said she saw the Tenant hit himself when he had documented proof from medical professionals who confirmed the injuries could not have been self inflicted.

SG affirmed that an incident occurred between him and the Tenant after they had spent three or four hours together but that he could not recall when it happened. He recalls playing video games with the Tenant that day and that after something was said the Tenant decided to leave. When the Tenant came back to get the rest of his stuff he was banging on the door and when SG opened the door the Tenant punched him, knocking him over. He stated that he suffers from a disability and that he has been involved in past incidents with the Tenant. He confirmed that on the night in question that the police told him he was going to be arrested and that after speaking with him and his mother they did not arrest him. Then he said the manager came and talked to him and that he told the manager he did not want to lay charges and he did not want to get involved in the ongoing situation.

SG confirmed he was not issued an eviction notice for this event however he had been issued a notice about three or four months ago for being too loud, but nothing was ever done with that notice. He said that prior to this incident the Tenant used to come up to

his unit once or twice a week and they would drink while watching TV or playing video games.

In closing the Manager stated he is at the building daily and that JB has everything under control when he is not there. He confirmed he has never given the Tenant instructions in writing to call him to deal with problems and there have been no other incidents between December 29, 2011 and January 27, 2012.

The Tenant advised that when he calls the manager he hangs up on him. Then he commented on the Landlord's change in witnesses stating that the witness CB was approached by the manager to testify and threatened that if he refused then the Landlord would evict him. However CB refused to testify stating that he would not get involved. The Tenant claimed that CB's wife was forced to file a complaint against him, after the notice was issued, and that she too was threatened with eviction.

### Analysis

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

Section 47(1) of the Act provides that a Landlord may end a tenancy by giving notice to end the tenancy if the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

The evidence provided by Landlord and his witnesses, in the form of testimony and copies of previous dispute resolution decisions, supports that some of the occupants of this building are marginalized, hard to house, and/or have alcohol dependency issues.

Upon review of JB's testimony I find that she provided insufficient evidence to prove that the Tenant significantly interfered with or unreasonably disturbed another occupant or the Landlord. Rather, I find her testimony to have proven that it was the actions of both SG and the Tenant who had disturbed her and which caused the police to have been called.

The evidence further supports that SG has had a history of disturbances, that he was equally involved in this incident, and that he was not issued an eviction notice. I find this supports the Tenant's statement that the Landlord has chosen to evict him and not others who have been the cause of disputes.

With respect to SG's testimony, I find that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord and his witness have the burden to prove that it was only the Tenant's actions which significantly interfered with or unreasonably disturbed another occupant or the Landlord. Accordingly, the only evidence before me was verbal testimony and I find the disputed verbal testimony insufficient to meet the Landlord's burden of proof.

The Landlord alleges the Tenant has been informed not to approach or deal directly with other tenants when incidents arise and that he was told to inform the Landlord so the Landlord can resolve any issues. The evidence supports the Tenant was never provided these instructions in writing. If the Landlord wishes to rely on this process in the future he will need to provide the Tenant with clear written instructions.

Section 47 (1) (h) of the Act provides that the Landlord may end a tenancy by giving notice to end the tenancy if the tenant has not corrected the situation within a reasonable time after the landlord gives the tenant written notice to do so.

In this case the evidence supports the Tenant was given a written notice on January 2, 2012, pertaining to the December 29, 2011 incident, after which no other incident occurred. Therefore, I find the Tenant acted in accordance with the Act and took measures to correct the situation.

Based on the aforementioned I find that the Landlord has not succeeded in meeting the burden of proof for issuing the 1 Month Notice to End Tenancy issued on January 27, 2012, and I therefore cancel the Notice.

### Conclusion

As I have determined that the Landlord has met the requirements of section 47 of the Act to end this tenancy for cause, I am granting the Tenant's application to set aside the 1 Month Notice to End Tenancy and this tenancy shall continue.

The 1 Month Notice to End Tenancy, issued January 27, 2012, is HEREBY CANCELLED and is of no force or effect.

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: February 29, 2012.

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Residential Tenancy Branch