



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, LRE, AAT, FF

### Introduction

This hearing dealt with the a tenants' application to cancel a Notice to End Tenancy for Cause and Orders to set conditions on the landlord's right to enter the unit and authorization for the tenants to change the locks. Both parties appeared or were represented at the hearing 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.

### Preliminary and Procedural Matter(s)

At the commencement of the hearing a witness appeared for the landlord. The landlord requested the witness be heard from at the beginning of the hearing as the witness was currently working and was travelling on the road. The tenant did not object to hearing from the witness at the beginning of the hearing. The witness was heard and both parties were provided the opportunity to ask questions of the witness before the witness was excused.

### Issue(s) to be Decided

1. Should the Notice to End Tenancy be upheld or cancelled?
2. Has the tenant established that the landlord's restricted right to enter the unit should differ from the provisions of the Act?
3. Has the tenant established a basis to change the locks to the rental unit?

### Background and Evidence

I was provided the following undisputed information: The tenancy commenced nearly 20 years ago and the current monthly rent of \$801.00 is due on the 1<sup>st</sup> day of every month. The rental unit is occupied by 81 year old woman and her adult son. There were four treatments for bed bugs in the unit during the months of June, July and August 2011. A follow up inspection for bed bugs was scheduled for and took place on January 31, 2012. The landlord's property manager and a pest control technician

attended the unit for purposes of the inspection. An altercation took place during the inspection and on February 7, 2012 the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause (the Notice). The Notice has an effective date of March 31, 2012 and indicates the reason for ending the tenancy is that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord submitted that on January 31, 2012 the female tenant physically assaulted the landlord's property manager and was verbally abusive towards the property manager and the pest control technician. The property manager testified as follows:

- The property manager and the pest control technician were let into the unit by the male tenant and they commenced the inspection in the first bedroom.
- The inspection continued into the second bedroom when all of a sudden the female tenant approached the property manager from the side and struck the property manager in the arm with a cane or walking stick while yelling "Out Scum Out".
- The property manager and the pest control technician retreated to the hallway outside of the rental unit where the male tenant was apologizing for the actions of his mother when the female tenant opened the door to the hallway and starting yelling and swinging her walking stick again.
- The male tenant was able to calm his mother and apologized to the property manager again.
- After the altercation the property manager went to her own unit and did not accompany the pest control technician for the remainder of the inspections in other areas of the building.
- The property manager immediately applied ice to her arm, a bruise appeared on her arm, and her arm was sore for approximately one week.
- The property manager did not seek medical attention or call the police.
- The property manager is responsible for maintaining the hallways in the building along with other duties of a property manager and she is now fearful when she is in the hallway near the rental unit.

The pest control technician appeared as a witness for the landlord ("the witness"). The witness confirmed he was in the unit with the property manager for purposes of conducting a follow up bed bug inspection. He described the events of January 31, 2012 as follows:

- The parties inspected the first bedroom and the female tenant was not present.

- The female tenant suddenly appeared and struck the property manager in the upper left arm and saying things that were verbally abusive to both the property manager and the witness.
- The assault was unprovoked and there was no apparent reason for it.
- The male tenant tried to quiet the situation and the property manager and the witness left the unit.
- The male tenant apologized to him and the property manager for his mother's conduct.
- The witness suggested to the property manager that she go to her own unit and put ice on her arm.
- The witness continued on with the remaining inspections without the property manager.

The witness also testified that he had previous dealings with the female tenant and he had found her to be cooperative. The witness described the property manager's reaction to the altercation as that of disappointment.

The tenant did not deny the events of January 31, 2012 as described by the property manager and the witness. However, the tenant submitted that his mother's behaviour was not so severe as to warrant a call to the police or a request for a restraining order.

The tenant explained that his mother is very ill, is on numerous medications, and does not need any additional stress. The tenant submitted that he believes his mother had reached a boiling point on January 31, 2012 due to previous dealings with the landlord and pest control company. To illustrate: the tenant submitted that the landlord had tried to get the tenants to agree to a sizable rent increase. Also, the rental unit door was left unlocked after the first bed bug treatment and after the second treatment the tenant's mother believed certain sentimental items went missing.

The tenant suggested that if/when future treatments or inspections are required the landlord give the male tenant advance notice and he will ensure his mother is not home when the entry takes place. The tenant further suggested the landlord use another pest control company and permit the tenants to change the locks.

With respect to changing of the locks, the landlord submitted that their key does not work in the tenants' lock. The tenant denied having the lock changed and suggested the landlord contractor did recoding of the keys.

The tenant was of the position that the property manager's fear of being in the hallway is unfounded due to his mother's age and medical illnesses and because his mother is not mentally ill, as documented by her doctor.

The landlord responded to the tenant's submission as follows: when the residential property was acquired by the current owner a number units were identified as paying below market rent, including the tenants' unit. The current owner hired an agent to enter into negotiations for rent increases and all tenants declined. The landlord submitted this Notice to End Tenancy was not issued due to the amount of rent payable by the tenants. Rather, the landlord expressed that they are agreeable to continuing with the tenancy with the male tenant if an agreement could be reached for the female tenant to vacate. The male tenant did not agree to this offer by the landlord.

Documentary evidence provided for this hearing included: the Notice to End Tenancy; a medical examination report for the female tenant; written statements of the property manager and the pest control technician; and, written submissions from both parties.

### 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. It is important to note that the burden of proof, based on a balance of probabilities, is not the same as the standard set for criminal cases which is beyond a reasonable doubt. Thus, the landlord meets its burden where the landlord presents a version of events that is more likely than not.

In this case, I have been presented undisputed evidence that the female tenant struck the property manager and yelled abusive statements toward the property manager and the pest control technician hired by the landlord. The tenant argued that the assault was not that significant; however, I find any level of violence towards the landlord, the landlord's agents, employees or contractors is unjustifiable or excusable especially considering the medical evidence shows that the female tenant is of sound mind. Having heard the female tenant continued to verbally attack the landlord's property manager and pest control technician in the hallway, after the initial attack in the rental unit, leads me to accept that the property manager's fear of performing her duties in the hallway has merit.

A landlord has many rights and obligations under the Act which include periodic entry in a rental unit, repairing and maintaining rental units and common areas, and, delivering documents to tenants. The landlord cannot be expected to tolerate violent behaviour

from one of its tenants and be expected to carry on their duties as a landlord in an ordinary or normal fashion. Nor can the landlord be expected to subject its employees, agents, or contractors to violence in the course of doing the lawful duties.

Considering all of the above, I am satisfied that the female tenant has exhibited violent behaviour against the landlord's property manager and contractor. I find I am able to conclude that the female tenant's actions have not only jeopardized the health and safety of the landlord's property manager but her actions have significantly interfered with the landlord's lawful rights and obligations under the Act. Thus, the landlord has met the burden to prove this tenancy should end for the reason indicated on the Notice.

While I am loathsome to end a 20 year tenancy involving an elderly person, I have considered whether I would hesitate to end this tenancy had the tenant been much younger or in a tenancy of shorter duration. I am of the position I would not hesitate to end this tenancy if that were the case. Therefore, in this case, I uphold the Notice to End Tenancy as the violence exhibited by the tenant must be the deciding factor, not the age of the tenant or the duration of tenancy.

In recognition of the landlord's willingness to permit the tenants more time to vacate the rental unit, I grant the landlord's request for an Order of Possession effective April 30, 2012.

With respect to the tenant's request to change the locks and set conditions upon the landlord's right to enter the unit I find as follows. I find there is insufficient evidence to conclude the landlord has in any way violated the requirements of the Act with respect to entering the unit and I find no basis for me to authorize the tenants to change the locks or set conditions on the landlord's right to enter.

I accept the verbal testimony presented to me that the landlord's keys may not work in the lock for the rental unit; however, I cannot determine whether this is a result of the tenants' actions or the actions of the landlord's contractor that may have recoded the locks. In any event, I find the landlord entitled to change the locks or modify the locks as necessary in order to ensure the landlord has a working copy of the key to the lock. Should the landlord change the lock during the remainder of this tenancy the landlord must ensure both tenants are provided new keys to the lock.

### Conclusion

The Notice to End Tenancy has been upheld. The tenancy shall end and the landlord is provided an Order of Possession effective April 30, 2012.

The tenants are not authorized to change the locks. The landlord must comply with section 29 of the Act to enter the unit but no additional conditions have been set upon the landlord with respect to entering the unit.

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: March 15, 2012.

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Residential Tenancy Branch