



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing was convened in response to an application being made by the tenant seeking to cancel a Notice to End Tenancy for Cause.

Both parties appeared at the hearing and gave evidence under oath.

### Issue(s) to be Decided

Has the landlord met the burden of proving cause to end this tenancy?

### Background and Evidence

This tenancy began on February 1, 2012. The landlord issued a one month Notice to End Tenancy stating that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The landlord testified that the tenant yells and slams his door. The landlord submits that at a previous arbitration the tenant testified that he yells when he gets stuck in the fire doors but the landlord disagrees that this is the case. The landlord testified that she has observed his yelling personally and she has heard the door slam. The landlord says there is a mechanism on the door whereby if the tenant let it close itself it requires nothing more than a slight push to completely close and that slamming the door is unnecessary. Further that the tenant was observed urinating behind a truck parked outside the rental building.

The landlord's witness BM moved in on January 15, 2012. She occupies Suite 104. BM testified that she has seen the tenant come out into the hallway and do what she refers to as his "...yip yip yip song...". BM says the tenant yells and screams 3-4 times per week between the hours of 7 to 10 pm. BM testified that she approached the tenant to see if he was okay but he only responds by yelling. On occasion she has seen the landlord/manager trying to speak to the tenant but he yells at her.

The tenant is a wheel chair bound quadriplegic who has been left further incapacitated by a stroke. The tenant says that he does get stuck in the fire doors. In one instance he had a take-out meal on his lap when he became stuck and he was struggling to get through the door and his meal was slipping off his lap. The tenant says he was injured in this instance and has a gash on his shin. The tenant says his door shuts in the normal fashion and sometimes it bangs. The tenant says that if there is supposed to be a mechanism on the door to stop it from banging then he would welcome the landlord coming to too at his door and add the mechanism.

The tenant said he did not urinate outside. The tenant questions who would have been able to see him do so stating that he was behind the truck picking up pine cones from the ground which he intends to use in his planters.

The tenant testified that he has neighbours all around him who have never complained about him.

The landlord says that the tenants neighbours have complained but they refuse to attend a hearing or put their complaints in writing.

The tenant says he is trying to find accommodation elsewhere and he will keep trying. The co-manager responded that there is other accommodation but the tenant is simply not trying hard enough.

The tenant responded that he has financial concerns as well as concerns about finding accommodation that can accommodate his condition.

### Analysis

The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find that the landlord has failed in its burden.

Conclusion

The tenant's application is allowed. The Notice to End Tenancy given for cause effective July 31, 2012 is cancelled. The effect of this decision is that this tenancy shall continue as though no notice had been served.

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: June 26, 2012.

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Residential Tenancy Branch