



# 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 the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make submissions to me.

The Tenant stated that she personally served the Application for Dispute Resolution, the Notice of Hearing, and documents she wished to rely upon as evidence to the Witness on August 15, 2012. The Agent for the Landlord acknowledged receipt of the documents.

The Landlord submitted documents to the Residential Tenancy Branch. The Agent for the Landlord stated that copies of the Landlord's evidence was sent to the Tenant, via registered mail, on August 29, 2012. The Agent for the Landlord stated that the Canada Post website shows this mail was returned to the sender on September 06, 2012 after it was "refused by recipient". The Tenant stated that she was unable to pick up the aforementioned registered mail because she did not have photo identification.

The Landlord was given the opportunity to request an adjournment for the purposes of re-serving the Landlord's evidence to the Tenant, however the Agent for the Landlord elected to proceed with the hearing on September 12, 2012, with the understanding that I would be unable to refer to the documents the Landlord submitted as evidence.

### Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside.

### Background and Evidence

The Landlord and the Tenant agree that a One Month Notice to End Tenancy for Cause was posted on the door of the rental unit on July 31, 2012.

The reasons cited for ending the tenancy on the Notice to End Tenancy were 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; that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; and that the Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk.

The Agent for the Landlord stated that the Landlord wishes to end this tenancy, in part, because the Tenant has interfered with the Landlord's efforts to upgrade plumbing in her rental unit.

The Witness, who acts as an agent for the Landlord, and the Tenant agree that on a recent occasion the Witness came to the rental unit with an individual who was identified to the Tenant as a plumber; that the Tenant asked the tradesman if he was a certified plumber and he advised that he was; that she asked the tradesman to produce proof of certification; and that the tradesman told the Tenant that he did not have his certification documents with him.

The Witness stated that he waited in the hall while the tradesman entered the rental unit; that he understood the purpose of this visit was to ascertain what materials would be needed to upgrade plumbing in the rental unit; that he understands the tradesman was able to view the plumbing and ascertain the materials he would need; and that when the tradesman exited the rental unit he told the Witness that he would have his boss call the Witness's boss.

The Tenant stated that she did allow the tradesman into her washroom to ascertain the materials needed to repair the plumbing and that she asked the tradesman to leave her rental unit after he told her she did not have the right to ask to see his certification.

The Witness stated that he and the tradesman returned to the rental unit the following morning; that they knocked on the door; that nobody answered the door; and that they left the without accessing the rental unit. He stated that he had not informed the Tenant that he would be returning the following day with the plumber, although he believes the tradesperson told the Tenant he would be returning the following day.

The Tenant stated that she did understand that the tradesman would be returning the following day; that she waited for him; and that she was not aware that he had knocked on her door.

The Witness stated that last week he was told that the tradesman would be returning to the rental unit but he does not know if that occurred. The Tenant stated that she does not know if the tradesman returned to the unit at any other time after the first visit.

The Agent for the Landlord acknowledged that the Tenant was never given written notice of the Landlord's intent to enter the rental unit.

The Agent for the Landlord stated that the Landlord wishes to end this tenancy, in part, because the Tenant pushed the Witness for the Landlord.

The Witness for the Landlord stated that on July 31, 2012 the Tenant asked him to sign a document on behalf of the Landlord; that he told the Tenant he was no longer authorized to sign documents on behalf of the Landlord; that both parties were upset and raised their voices during the discussion; that the Tenant was holding books in one hand, which somehow fell to the floor during the interaction; and that the Tenant used one hand to push him back into the supply room.

The Tenant stated that on July 31, 2012 she became upset because the Witness for the Landlord refused to sign a document on behalf of the Landlord; that both parties were upset and raised their voices during the discussion; that her arms were flailing during the interaction; that the Witness for the Landlord's arms were flailing during the interaction; that she was holding books in one hand, which somehow fell to the floor during the interaction; that the Witness for the Landlord lost his balance and fell backwards; and that she does not believe she pushed the Witness for the Landlord.

When the Witness for the Landlord was asked by me if it was possible he had tripped during the altercation he stated that it is "quite possible" that he tripped, "but not that I know of".

When the Witness for the Landlord was asked by the Agent for the Landlord if he felt threatened by the Tenant he stated that he felt threatened "in a way". I asked him to clarify this statement and he stated that he was afraid she might hit him in the face.

The Witness for the Landlord stated that he reported this incident to the Agent for the Landlord on July 31, 2012, at which time he informed him that he wanted to quit. He stated that he has since reconsidered that decision and that he continues to work for the Landlord.

### Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the Landlord has provided insufficient evidence to show that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord; that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; and/or that the

Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk.

In reaching this conclusion I placed no weight on the interaction between the Tenant, the Witness, and the tradesman. Although a tenant generally has no right to question the credentials of a tradesman hired by a landlord, I find that the Tenant's questioning of the tradesman's credentials in this situation did not significantly interfere with the Landlord's ability to maintain the unit. On the basis of the undisputed testimony of the Witness, I find that when the tradesman initially entered the rental unit his intent was to ascertain the materials he needed to upgrade some plumbing, and that the tradesman was able to ascertain the materials needed on that date. I therefore cannot conclude that the Tenant's actions on that date interfered with the Landlord's ability to maintain the unit.

On the basis of the undisputed testimony of the Witness, I find that the tradesman made at least one more visit to the rental unit, possibly two, but could not gain access because the Tenant was either not at home or did not respond to the knocking on her door. There is no evidence that the Landlord provided the Tenant with written notice of the Landlord's intent to enter the rental unit. In the absence of evidence to show that the Tenant prevented a tradesperson from entering the rental unit after the initial encounter, I cannot conclude that she did anything to interfere with the Landlord's ability to maintain the rental unit. I specifically note that the Landlord did not avail itself of the right to enter the rental unit by giving proper written notice, pursuant to section 29(1)(b) of the *Act*, in which case they could have accessed the rental unit even if the Tenant was not at home.

In determining this matter I find that the Landlord submitted insufficient evidence to show that the Tenant assaulted the Witness for the Landlord, and I therefore cannot conclude that this tenancy should end on the basis of the alleged assault. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Witness for the Landlord's testimony that he was pushed; by the Witness for the Landlord's statement that it is possible he tripped; and by the absence of evidence that refutes the Tenant's testimony that she does not believe she pushed the Witness.

While I accept the Witness was afraid that the Tenant might hit him during this altercation, I find that there is insufficient evidence to conclude that the fear was justifiable. As the Witness for the Landlord acknowledged that both parties were upset and raised their voices during the discussion, I find that the Landlord cannot rely on this isolated incident to end the tenancy.

### Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to sections 47(2)(d)(i,) 47(2)(d)(ii),

or 47(2)(d)(iii) of the *Act*, I set aside the One Month Notice to End Tenancy and I order that this tenancy continue until it is ended in accordance with the *Act*.

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: September 12, 2012.

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Residential Tenancy Branch