



# 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 a tenant's application to cancel a Notice to End Tenancy for Cause. 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.

### Issue(s) to be Decided

Should the Notice to End Tenancy for Cause be upheld or cancelled?

### Background and Evidence

The tenancy commenced nearly three years ago. The tenant is required to pay rent of \$600.00 on the 1<sup>st</sup> day of every month. The tenant occupies a basement suite and the landlord lives in the upper unit. The tenant was personally served with a 1 Month Notice to End Tenancy for Cause (the Notice) on January 15, 2013 that is the subject of this dispute.

The Notice indicates six reasons for ending the tenancy; however, during the hearing the landlord's son stated that two reasons were indicated in error. The remaining four reasons are as follows:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
  - put the landlord's property at significant risk
- Tenant has caused extraordinary damage to the unit/site or property/park

The landlord had not provided any documentary or photographic evidence in support of his position. The landlord's son provided the following verbal testimony during the hearing:

1. While the landlord's son was working on the exterior of the house, the tenant approached the landlord's son in an intoxicated state and began shouting at him. Then the tenant began saying nasty things to the landlord. The tenant called the police alleging the landlord had a weapon and when the police attended the tenant began yelling at the police.
2. The tenant knocked on the landlord's door at 2:30 a.m. in the morning in early December 2012 and again in early January 2013.
3. The tenant contacted the landlord's realtor and said something to the effect that the house could not be sold without the tenant's consent.
4. The tenant gave the landlord's daughter a letter informing the landlord that their realtor was involved in an assault and that the tenant would start deducting money from rent if the property was not cleaned up. The landlord denied that there is any truth to these allegations. Shortly thereafter, the realtor's sign was vandalized.
5. During a showing of the rental unit to a prospective buyer the landlord observed stains in the carpet in the rental unit. The tenant told the prospective buyers that the stains were a result of a leak in the house.

The landlord's son was uncertain as to the exact dates the above events took place but submitted that they occurred in December 2012 or January 2013.

The tenant provided the following responses to the landlord's submissions:

1. While the landlord's son was working on the exterior of the property the tenant approached the landlord's son about the garbage that had accumulated during the previous weeks. The tenant appeared frustrated as he contended that he raised the issue several times before without a sufficient response from the landlord. In response, the landlord's son started shouting at the tenant and threatened to evict him. The tenant called the police. The police talked to the landlord's son but not the tenant and then they left the property. The tenant did not yell at the police or the landlord.
2. The tenant denied knocking on the landlord's door in the early morning hours. Rather, he knocked once in the mid-afternoon to enquire about his mail as he had not received it in the weeks prior.
3. The tenant contacted the landlord's realtor to caution the realtor that the landlord had not been disclosing information to the realtor or prospective buyers.

4. The tenant was not provided a copy of the letter the landlord was referring to.
5. There is a stain on the carpet and it is from a leak that originated from the kitchen above his unit a few months prior.

The tenant's advocate also pointed out that the parties had been to a dispute resolution proceeding before, in November 2012, to deal with an improper eviction notice and an improper rent increase. The tenant was successful in that application.

The tenant's advocate submitted that the landlord had not provided sufficient reasons or evidence to support ending the tenancy. Upon explaining the landlord's burden of proof to the landlord's son the landlord's son became argumentative with me and threatened to hold me responsible for any wrong-doing that may come of cancelling the 1 Month Notice.

### 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.

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 their onus to prove.

In the absence of photographs or other corroborating evidence, I find there is insufficient evidence to conclude that there is significant damage to the rental unit or property or that any such damage was caused by the tenant. Nor, was I provided any evidence to indicate the tenant's actions or neglect have put the landlord's property at significant risk.

I find the disputed verbal testimony insufficient to conclude that the tenant knocked on the landlord's door in the early morning hours on two occasions, as alleged by the landlord.

The allegation that the tenant shouted at the landlord's son on one occasion is insufficient to conclude that such conduct seriously jeopardized the health or safety of the landlord or another occupant. However, I have considered whether that conduct is sufficient to conclude the tenant unreasonably disturbed or significantly interfered with the landlord or another occupant of the property.

Both parties accused the other party of shouting during the above described incident. It was undisputed that the police were called by the tenant and the police attended the property. The police left the property without detaining either party or laying charges. Upon observing the conduct of the parties during the hearing, I accept that it is likely that both parties raised their voices or shouted at each other. Such conduct, by either party, is inappropriate and does not foster a successful tenancy relationship; however, I find insufficient evidence that this one incident of mutual shouting is so disturbing or significant as warrant an end to the tenancy.

In light of the above, I find the landlord has failed to meet his burden to prove the tenancy should end for the reasons indicated on the Notice, as amended, and I cancel the Notice with the effect that this tenancy continues.

Since the tenancy continues, I find it appropriate to caution BOTH PARTIES that shouting and yelling at each other is inappropriate, regardless as to who shouts first, and that such conduct is unlikely to result in a warning in the future. Therefore, I strongly suggest the parties restrict their communication with each to the written form for the time being.

### Conclusion

The 1 Month Notice to end Tenancy for Cause has been cancelled and the tenancy continues. Both parties have been cautioned that shouting at each other is inappropriate and unlikely to be tolerated in the future.

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 20, 2013

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Residential Tenancy Branch

