



# 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 1 Month 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.

### Preliminary and procedural matters

After hearing considerable testimony from the parties and reading the documentary evidence I gave my findings orally. The tenant then asked that the hearing be adjourned so as to gather police reports. The tenant acknowledged he had not requested the police reports prior to the hearing. The tenant's request for adjournment was denied as I found he did not demonstrate reasonable efforts to gather relevant evidence prior to the hearing and, as I informed the tenant, police calls to the property were only one of the issues presented to me. The tenant proceeded to get angry and accused me as being biased. The tenant then voluntarily disconnected from the teleconference call. A few minutes he dialed back in and apologized for his conduct; however, within a few moments he was berating the landlord. I cautioned the tenant about his conduct and he was able to regain his composure until the end of the teleconference call.

During the hearing the landlord requested an order of Possession be provided to him.

### Issue(s) to be Decided

Should the Notice to End Tenancy be upheld or cancelled?

Is the landlord entitled to an Order of Possession?

### Background and Evidence

The tenancy commenced approximately two years ago and the tenant is required to pay rent of \$450.00 on the 1<sup>st</sup> day of every month. The rental unit is a basement suite in a four-plex. The tenant shares the basement suite with another tenant who has a separate tenancy agreement with the landlord (ie: they are tenants in common).

On February 21, 2013 the tenant was served with a 1 Month Notice to End Tenancy for Cause (the Notice). The Notice has an effective date of March 31, 2013 and indicates the reasons for ending the tenancy are 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
  - 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 engaged in illegal activity that has, or is likely to:
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
  - jeopardize a lawful right or interest of another occupant or the landlord

During the hearing the landlord indicated he did not wish to pursue the reasons related to "illegal activity". Nor was I presented evidence related to putting the landlord's property at significant risk. The landlord's submissions in support of the eviction relate to the tenant's disturbance of other tenants living in the building and jeopardizing the landlord's rights as a landlord, which I have summarized below.

The landlord submitted written letters from several of the other tenants living in the building and the landlord had one of the tenants standing by to testify as a witness. The letters depict how the other tenants have been unreasonably disturbed for the last year, mostly due to the tenant yelling and screaming, fighting, playing extremely loud music, throwing furniture and damaging property, usually in the late night or early morning hours; and, saying or sending threatening messages to other tenants. I was provided copies of the racist, vulgar and threatening text messages sent from the tenant to another tenant on the property that I will not repeat here.

The other tenants and the landlord suggest the problems with the tenant's behaviour are rooted in substance abuse and that they have been patient in waiting to see if the tenant will get help for his substance abuse and/or behavioural issues. However, the

other tenants and the landlord can no longer tolerate the disturbances as their ability to get enough sleep at night and go to work is being significantly compromised on an on-going and frequent basis.

The landlord described numerous calls to the police by himself and other tenants in response to the tenant's violent outbursts, excessive noise, and fights. The landlord, who is the tenant's uncle, often gets calls from the other tenants and attends the rental unit in an attempt to defuse the situation. In attending the rental unit he has found the tenant in various states including: what appears to be drunk or high; out of control and aggressive; or, in a stupor talking to himself.

Aside from the letters from the other tenants and the text messages, the landlord provided a photograph of the kitchen showing the kitchen table and chairs overturned with possessions and alcoholic beverage containers strewn about; a police report, and his own written account of disturbing events involving the tenant.

The tenant denied that he has an issue with drugs or alcohol and indicated that if he drinks it is only a couple of beers. The tenant acknowledged that he went to a drug and alcohol recovery center at the urging of his uncle but that it was determined he didn't have a problem with drugs or alcohol. The tenant then saw a psychologist but the cost for continued treatment was prohibitive.

The tenant acknowledged that the police have been called to the property at least 15 times but claimed that the police presence were requested as another tenant was threatening him and his roommate's friend assaulted him. The tenant submitted that he could obtain police reports to prove this if he were provided more time to do so. The tenant described how when the police attend the property he has not been arrested. Rather, the police drive him away from the property and drop him off at another location such as the Sky train station.

The tenant acknowledged overturning the kitchen table and chairs in the kitchen but claims he did not throw the furniture in doing so. He explained that he was mad at his uncle (the landlord) when he did so because the landlord tends to prefer the other tenant's version of events over his version of events.

The tenant stated that one of the landlord's witnesses had actually banged on his door in the early morning hours to yell at him. When asked why she did that or what she was saying to him, the tenant claimed he had no idea why she was doing that and he could not tell me what she was saying. The tenant did acknowledge that if another tenant

accuses him of using drugs or alcohol or tells him to be quiet he yells or swears back at them.

When asked about the other tenants that have written complaint letters the tenant responded by stating that if other people “would stay out of my face” there would not be any problems.

With respect to the threatening text messages, the tenant stated he did not recall sending them to the other tenant but that if he did they were meant to be a joke.

Essentially, the tenant is of the position that he is not responsible for the disturbances at the property and that he is being blamed for the actions of other tenants.

### 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.

Under the Act, a tenancy may be ended where a tenant unreasonably disturbs or significantly interferes with other occupants’ ability to enjoy their unit or the common areas or where the tenant jeopardizes the health and safety of other occupants, or put’s the landlord’s lawful rights in jeopardy.

Unreasonable disturbance and significant interference of other occupants may include excessively loud or repeated or ongoing noises associated with yelling, screaming, fighting; and, threats of violence. The tenant is alleged to have engaged in all of these behaviours, on a frequent basis, by numerous other tenants who live on the property and by the landlord’s observations himself. I accept the written statements of the numerous other tenants, the text messages, the landlord’s testimony, the photograph of the overturned kitchen, and the police report, as sufficient evidence to support the allegations against the tenant, on the balance of probabilities.

Whether the tenant’s conduct is fuelled by drugs and alcohol is uncertain but what I do find certain is that his behaviour is unreasonably disturbing and significantly interfering with other occupants; and, is putting the landlord’s lawful right to ensure other tenants are provided quiet enjoyment of their units at significant risk.

In placing the blame on everybody else I find the tenant unlikely to change his conduct for any significant length of time as he does not appear to accept any responsibility for his actions.

While I accept the tenant's statements that another tenant or guest may be responsible or partly responsible for some of the fighting or disturbances at the property the tenant must be held responsible for his own actions and, as I have found above, I find his actions warrant an end to his tenancy.

In light of the above, I uphold the 1 Month Notice to End Tenancy for Cause issued by the landlord February 21, 2013 and I dismiss the tenant's request to cancel the Notice.

Under the Act, where a tenant's request to cancel a Notice to End Tenancy is dismissed or the Notice is upheld, and the landlord orally requests an Order of Possession at the scheduled hearing, an Order of Possession shall be provided to the landlord.

Accordingly, I grant the landlord's request for an Order of Possession. The landlord is provided an Order of Possession to serve upon the tenant with an effective date of March 31, 2013.

### Conclusion

The Notice to End Tenancy has been upheld and the tenant's application dismissed. The landlord is provided an Order of Possession to serve upon the tenant with an effective date of March 31, 2013.

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 22, 2013

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Residential Tenancy Branch

