



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Lumby and District Senior Citizens Housing  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a One Month Notice to End Tenancy for cause.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. Both Parties confirmed receipt of evidence and confirmed that they had opportunity to review it. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

Is the tenant entitled to have the Notice to End Tenancy cancelled?

### Background and Evidence

The parties agree that this month to month tenancy started on October 01, 2011. Rent for this unit is \$240.00 a month and is due on the first day of each month.

The landlord testifies that they received a complaint letter from a female tenant residing in this senior citizen housing about the tenant exposing himself to the female tenant in

the female tenants unit. The landlord testifies that this incident happened in December, 2011. Later the landlord received a letter from another tenant who complained about an aggressive act towards her from the tenant when the tenant was pointing a dart in that tenants face in the common lounge area. The landlord testifies that that tenant and her husband made a complaint about this tenant.

The landlord testifies that the tenant was sent a warning letter concerning these incidents. This letter informs the tenant that his aggressive behaviour and inappropriate behavior by exposing himself to a female tenant violates the terms of the tenancy agreement and creates an atmosphere which is unsafe and uncomfortable for the other residents. This letter also informs the tenant that any further aggressive or inappropriate behaviour will result in immediate eviction.

The landlord testifies that there were further complaints about this tenant's aggressive behaviour towards other tenants in October and November, 2012. One of these incidents involved another tenant who suffers with dementia. A disagreement took place between this tenant and the other tenant which resulted in this tenant hitting the other tenant and the other tenant then retaliated by hitting this tenant back many times. The landlord testifies that they were informed of this incident anonymously when a compliant letter was put under the landlord's door.

The landlord testifies that the other residents are afraid of being in the lounge alone with this tenant as further incidents have taken place in the lounge between other tenants and this tenant. The landlord orally requests that the One Month Notice to End Tenancy is upheld and they seek an Order of Possession effective on March 31, 2013.

The tenant disputes the landlords claim. The tenant testifies that he recalls the landlord asking the tenant about the compliant concerning the tenant allegedly exposing himself to a female tenant. The tenant denies that this incident occurred and testifies that he had a rapport with the female tenants living on either side of the tenant. They would

share cigarettes and the tenant testifies he helped one of the female tenants pack her truck when she was moving out of her unit.

The tenant disputes that he pointed a dart in another tenants face or that that tenant's husband was present. The tenant testifies that that tenant in question does not like the tenant because she complains about his smoking. The tenant agrees he was in the lounge area playing darts and that tenant was present with two other tenants. The tenant testifies that that tenant spent 15 minutes berating the tenant about his smoking but he did not point a dart at the tenant. The tenant testifies that this tenant and her husband have been trying to get the tenant evicted when he moved near their unit and they found out that the tenant smokes.

The tenant disputes the landlords claim about the incident that occurred with the tenant suffering from dementia. The tenant testifies that he was in the lounge talking to another tenant about the war when this other tenant grabbed him by the throat. The tenant agrees he did slap that tenants hand away but disputes that that tenant hit him several times. The tenant testifies that he wrote a letter concerning that incident, what happened and who was present during the incident and gave it to the resident manager at that time who assured the tenant the letter would be placed on the tenants file. The tenant testifies that the tenant suffering with dementia does get aggressive and that tenant's son told the tenant that his father must be disciplined about his behaviour when he forgets to take his medication.

The chair person from the complaints committee agrees that the other tenant involved in that incident does suffer from dementia and does get confused.

The tenant testifies that there are some tenants who do not like him but there are other tenants he does get along with. The tenant seeks to have the Notice to End Tenancy cancelled.

### Analysis

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. I am not satisfied that the reasons given on the One Month Notice are sufficient to end the tenancy. The landlord has provided some complaint letters from other tenants but these letters have not been sworn before a Notary and the landlord has not asked these complainants to attend the hearing as witnesses to give testimony under oath or submit to cross examination. One of the letters has been proved anonymously and carries very little weight. The tenant disputes the landlords claims and contradicts the landlords testimony that he hit another tenant and testifies that it was the other tenant who actually assaulted the tenant by putting his hands around the tenants throat.

I further find that the landlord has not fully investigated these incidents to determine the validity of the complaints made against the tenant. Merely discussing it with the person making the claim is not sufficient to determine any altercations between tenants and who is at fault.

Therefore, in the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

I do however caution the tenant that any further incidents that are fully investigated by the landlords may result in another One Month Notice to End Tenancy being issued to the tenant.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated, February 19, 2013 is cancelled and the tenancy will continue.

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 21, 2013

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Residential Tenancy Branch

