



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp and Cedartree Village Apartments  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, DRI

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling a 1 Month Notice to End Tenancy for Cause (the "Notice") and to dispute an additional rent increase.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary issue*-I have determined that the portion of the tenant's application dealing with a dispute of an additional rent increase is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant's Application and dismissed that portion of the tenant's application disputing an additional rent increase, with leave to reapply.

The hearing proceeded only upon the tenant's application to cancel a Notice to End Tenancy for Cause.

### Issue(s) to be Decided

Has the tenant established an entitlement to have the 1 Month Notice to End Tenancy for Cause cancelled?

### Background and Evidence

I was presented undisputed evidence that the tenancy began on May 1, 2012, the tenant's current monthly rent contribution is \$688.00, and the tenant paid a security deposit of \$375.00 and a pet damage deposit of \$200.00 at the beginning of the tenancy.

The rental unit is in a multi unit building, with 78 apartments.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause. The Notice was dated March 5, 2013, was delivered to the tenant by posting it on the tenant's door on that date, listing an effective end of tenancy on April 30, 2013.

The cause listed on the Notice alleged that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord's relevant evidence included two written statements from other tenants living near the tenant in the residential property, the tenancy agreement, the Notice, a letter to the tenant, dated March 5, 2013, informing her of the reason she was given the Notice, which dealt with noise complaints, an email from the security company working at the residential property, regarding a police call-out, a written notice to the tenant, dated February 9, 2013, regarding smoking in a non-smoking area, a February 5, 2013, notice to the tenant regarding a noise complaint, a notice to the tenant dated November 28, 2012, regarding a dog in the rental unit, a notice to the tenant dated November 24, 2012, regarding the tenant's guests, a notice to the tenant dated August 9, 2012, regarding a dog on the balcony, a notice to the tenant dated August 7, 2012, regarding the tenant's guests being possible drug dealers, and a notice to the tenant dated March 26, 2012, about the police towing away a truck.

The tenant's relevant evidence included a written summary of events, with an explanation of the notices contained in the landlord's evidence, a witness statement, a letter from the tenant's mother stating that the tenant was visiting the mother at the time in question regarding the smoking notice, and character reference letters.

In support of their Notice the landlord, the property manager, testified he has been approached on several occasion by other tenants in the building concerning the noise coming from the tenant's rental unit, and her guests when entering and leaving the building.

The landlord said that he has reminded each tenant that they are responsible for their guests' behaviour.

When questioned, the landlord said he issued the tenant the first written warning letter concerning noise in November 2012 and the next one was on February 5, 2013. The noise included slamming doors and arguing.

The landlord said this problem arises every couple of months.

The landlord also mentioned a particular incident in early March 2013, when a severely injured man was at the tenant's rental unit, who was escorted off premises by the police.

The landlord also said there was an issue with a dog in the tenant's rental unit; however when queried, the landlord said this matter had been resolved.

In another instance, the landlord said he issued the tenant a warning letter about her smoking outside the door; however when queried, the landlord said this was a onetime incident and has not happened again.

The landlord also submitted that a truck was towed from the premises on March 26, 2012, which the landlord alleged was owned by the tenant's boyfriend.

The landlord also mentioned that the tenant had hookers coming and going from her rental unit.

In response, the tenant submitted that as to the noise complaints, the tenant agreed that her guests had been loud when leaving her rental unit after they had been drinking, but that she will not and has not allowed them to return.

The tenant denied smoking on the premises as alleged by the landlord as she was ill and staying with her parents the time of the alleged incident.

As to the allegation of a hooker coming from her rental unit, the tenant expressed indignation that her friend was called a hooker just because she dresses provocatively and walks with a swing due to her disability.

As to the Notice issued by the landlord on November 24, 2012, the tenant did not know what the Notice was concerning.

As to the incident of the dog, the tenant said that the dog belonged to a friend who was visiting that weekend.

As to the incident with the truck, the tenant said that she was the one who called the police.

The tenant also contended that as to the injured man who knocked on her door, she was not the one letting him into the building; however, when she did open the door and saw his condition, bleeding all about his face, she let him in to administer medical treatment, as that is her background.

The tenant said she had nothing to do with the man coming onto the residential property grounds, but would not turn him away for humane reasons.

### Analysis

Based on the relevant evidence, and on a balance of probabilities, I find as follows:

Once the tenant made an application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

In this instance, the burden of proof is on the landlord to prove the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

After considering all of the evidence submitted for and at this hearing, I find that the landlord has provided insufficient evidence to substantiate the cause listed. In reaching this conclusion I was not convinced that a single warning letter to the tenant concerning noise complaints is enough to justify ending a tenancy. In reviewing the landlord's evidence, only one written warning was issued to the tenant about noise.

I was also not persuaded by the landlord's other physical evidence about the smoking. The tenant denied that she was smoking and the landlord said that she was. Nonetheless, the landlord agreed that this was not a problem before the alleged incident and not a problem since the alleged incident.

I was also persuaded by the alleged incident regarding the dog, as this incident occurred, if at all, on August 9, 2012, according to the landlord's record. I don't find this incident enough to terminate the tenancy as the landlord did not issue a 1 Month Notice to End Tenancy for Cause at the time of the incident and the landlord agreed that there has been no recurring problem. This led me to conclude that this alleged incident was not enough in the landlord's view that an end to the tenancy was justified.

I was not persuaded that the incident of a bleeding man entering the tenant's rental unit is sufficient cause as the landlord's own evidence showed that there was a disagreement off premises. I find it interesting to note that this evidence from the security company showed that the security officer was going to call the police due to someone passed out on another floor.

I also find that the landlord's evidence about hookers and a stolen truck to be vague and non-specific and therefore contained no substantiation that the tenant was in anyway involved with either.

Due to the above, I therefore find that the landlord has submitted insufficient proof to prove the cause listed on the Notice.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated and issued March 5, 2013, for an effective move out date of April 30, 2013, is not valid and

not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

Conclusion

I grant the tenant's application seeking cancellation of the landlord's 1 Month Notice and the Notice is hereby cancelled with the effect that the tenancy will continue until 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* and is being mailed to both the applicant and the respondent.

Dated: April 05, 2013

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Residential Tenancy Branch

