



# 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 by way of conference call in response to the tenants' application to cancel a Notice to End Tenancy for cause.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

Are the tenants entitled to have the One Month Notice to End Tenancy cancelled?

### Background and Evidence

The parties agree that this tenancy started on Either June or July 1994. Rent for this upper unit is \$725.00 per month and is due on the 1<sup>st</sup> day of each month.

The landlord testifies that the tenants were served a One Month Notice to End Tenancy on April 20, 2013. This Notice gave the tenants one reason to end the tenancy because the tenants or a person permitted on the property by the tenants has significantly interfered with or unreasonably disturbed another Occupant or the landlord of the residential property. The Notice has an effective date of May 31, 2013 and was served in person to the tenants.

The landlord testifies that these tenants and the downstairs tenants have been in conflict over the past few years and when disputes have arisen the landlord has had to mediate between the tenants. This time the downstairs tenants filed a police report against the female upper tenant after an incident occurred where the female tenant got in her car and the car tires sprayed gravel on the lower tenant while the lower tenant was cutting a neighbour's lawn. The landlord testifies that when he determined that there was a police file number the landlord had to do something so issued the upper tenants with the Notice to End Tenancy for cause.

The landlord testifies that over the years there have been other complaints from the lower tenants about the upper tenants namely the upper tenants allowing their guests to urinate in the yard, noise issues, smoking in the tenants' back room, and issues over parking.

The landlord calls his witness who is the lower tenant. The witness testifies that she has lived below the tenants for seven years. During that time there was no problems with the female tenant but the male tenant VM has threatened the witness's daughter and the witness's boyfriend. The witness testifies that the male tenant has allowed his friends to urinate outside by the witness's window and in front of the witness's guests. The witness testifies that the upper tenants sit outside at night drinking and they smoke inside the house even though this is a non smoking house. The witness testifies that the smell of smoke filters into her kitchen cupboards. The witness testifies that the neighbours are scared of VM and will not make a complaint against him due to his temper and are worried about repercussions against them if they do complain. The tenant VM has played loud music with one song repeated over and over again. The witness testifies that she asked the landlord to go and speak to the upper tenants and the upper tenant VM threatened the landlord. The witness testifies that these incidents happened some time ago.

The witness testifies that the most recent incident happened while the witness was mowing a neighbour's lawn. The female tenant got into her car and spun the tires over the gravel sending the gravel into the witness legs. The witness testifies that she called the police but although they gave the witness a file number they could not do anything as no direct assault had taken place. The witness testifies that later the female tenant wrote to the witness and

apologised for this incident saying it was due to a new pair of shoes that the tenant was wearing at the time. A copy of this letter has been provided in evidence.

The witness testifies that there is a parking situation at the property. There is a fire hydrant outside the property, the female tenant has a car and the male tenant has a truck. The tenants block the driveway to the property by parking out front which prevents the witness accessing her unit when taxis arrive for her or when friends come in their cars to help the witness with her shopping. The witness testifies that the tenants have street parking but are not respectful of leaving the driveway access clear. The witness testifies that she cannot walk in or out of her unit without snide comments and looks from the upper tenants. The witness's 19 year old daughter was nearly assaulted by the male tenant when she was 13 years old and now feels threatened by the male tenant.

The tenant VM testifies that these incidents are over exaggerated. VM testifies that he did have a friend who did urinate in the yard by a tree but the tenants have since told that friend he is not to do so. The tenant SH testifies that the tenant VM did not nearly assault the witness's 13 year old daughter. The witness's daughter had thrown the tenants young son into the yard and the tenant VM overreacted and yelled at the witness's daughter.

The tenant SH testifies that the incident that occurred recently when the tenant got into her car happened when the witness was standing near the front of the car but as the tenant's tires spun the gravel went backwards rather than towards the witness. The gravel hit the back tire and could not have hit the witness. The tenant testifies that she later apologised to the witness for this incident.

The tenant VM testifies that they do not play their music any louder than the witness or her daughter. The witness's daughter also disturbs the tenants by bouncing balls downstairs. The tenants testify that the witness also used to smoke in her unit and the smell would come up into the tenants' upper unit. The witness also smokes pot in the bathroom downstairs which the upper tenants can smell. The tenants testify that there have been incidents where the police have been called due to the witness and her friend fighting and one of the witness's guests hit VM's truck parked outside. The tenants testify that they have

had to put up with a lot of trouble with the witness and their guests but try to be reasonable about it.

The landlord orally requests an Order of Possession at the hearing for June 30, 2013.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. 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. The landlord has provided a witness who is the tenant living below these tenants. Having heard the witnesses testimony and that of the tenant I am not satisfied that this witness's testimony is completely unbiased as there is obviously a long running dispute between the upper and lower tenants. With this in mind I am not satisfied that the landlord has sufficient evidence to meet the burden of proof in this matter. Many of the alleged incidents happened some time ago without any repercussions from the landlord and without corroborating evidence of these past incidents I am not prepared to consider them.

I find that this latest incident between the two sets of tenants appears to stem from this long running conflict for which both sets of tenants must share the responsibility. I am not therefore prepared to issue an Order of Possession to the landlord on the testimony of the landlords witness and as the landlord has no direct knowledge of this incident, then any testimony provided by the landlord is merely hearsay gained from the lower tenants.

The landlord testifies that he had to take this action after a police file report however no charges were laid against the upper tenant and no corroborating evidence has been provided to show that the lower tenant sustained any injuries after this incident with the gravel or that the incident was caused through malicious intent by the upper tenant. Consequently, in the absence of any corroborating evidence, that shows a strong and

complying reason to uphold the One Month Notice to End Tenancy I find that the landlord has insufficient 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 tenants as to their behavior towards the lower tenants. I suggest that if the two sets of tenants do not get along peacefully that they cease to have any contact with each other and remain respectful of the other tenant's right to quiet enjoyment of the rental unit. I strongly suggest to the landlord that he extends this caution to the lower tenants to be respectful of the upper tenants and to refrain from having any contact with each other.

### Conclusion

The tenants' application is allowed. The one Month Notice to End Tenancy for Cause dated April 20, 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: May 27, 2013

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Residential Tenancy Branch

