



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOMES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MT, CNC

### Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution made by the tenant to cancel a One Month Notice to End Tenancy for Cause and to allow the tenant more time to make an application to cancel the notice to end tenancy.

The tenant served the landlord with a copy of the application and Notice of Hearing documents on May 28, 2013. The landlord confirmed receipt of the documents and based on this, I find that the landlord has been served in accordance with the *Residential Tenancy Act*.

Both parties attended the hearing and each party called a witness. All the parties gave affirmed testimony and the landlord and tenant were given the opportunity to cross examine each other and the witnesses on the evidence provided. All the affirmed testimony given during the hearing and the prior evidence submitted has been carefully considered in this Decision.

### Issue(s) to be Decided

- Has the tenant justified the reasons for making an application to dispute the notice to end tenancy outside of the allowable timelimits?
- Is the tenant entitled to cancel the One Month Notice to End Tenancy for cause issued by the landlord?

### Background and Evidence

Both parties agreed that the tenancy started on August 1, 2004 for a fixed length of one year, after which it converted to a month-to-month basis thereafter. A tenancy agreement was completed and currently, rent in the amount of \$809.00 is payable by

the tenant on the first day of each month which includes one underground parking space. The landlord collected a security deposit from the tenant on August 1, 2004 in the amount of \$325.00. The rental unit is within a complex that contains underground and open parking areas, several townhome buildings, courtyards and other communal areas.

The landlord testified that the tenant, on numerous occasions, has been riding his motorbike along the internal pedestrian pathways through the residential courtyards of the complex in order to get to the patio of the rental suite where the bike is then being consistently parked. The landlord testified that this is being done at all hours of the night without regard for the neighbours' quiet enjoyment. The tenant has also been doing repairs to the motorbike within the complex whilst consuming alcohol and playing loud music.

The landlord further testified that a number of verbal complaints and an e-mail were received stating that the residents in apartment 207 had been driving their motorbike on the pathways as well as drinking and smoking pot openly. The landlord testified that on further investigation of this with the building manager, it was discovered that the tenant had been creating a disturbance.

As a result, the landlord issued the tenant with a 'Noise and Disturbance Final Warning' letter dated April 24, 2013. The letter was provided as evidence and states that it has come to the attention of the landlord that the tenant has been involved in creating a disturbance to other residents involving loud and disruptive behaviour. The letter refers to sections 17 of the tenancy agreement, that was signed by both parties, which refers to the conduct of a tenant; it states that a tenant "must not disturb, harass or annoy another occupant" and further states that a tenant must not engage in repeated noise after they have been requested to discontinue the noise or behaviour by the landlord. The letter also quotes section 20 of the written tenancy agreement which states vehicles cannot be stored on the residential property. The letter concludes with a warning that if the breach letter is not complied with, then a 30 day eviction notice will be issued to the tenant. The landlord also provided photographic evidence of a motorbike parked outside the tenant's unit taken on April 4 and April 24, 2013.

The landlord testified that on the morning of May 13, 2013 the tenant was issued with another breach letter which was accompanied by a One Month notice to End Tenancy for Cause. The breach letter, provided as evidence, stated that another complaint was received regarding the parking of the motorbike outside of the tenant's rental unit. Because the landlord had already issued a breach letter for this, a notice to end tenancy was served by hand to the tenant on May 13, 2013 with an expected date of vacancy of

June 30, 2013. The notice to end tenancy, provided as evidence, states two reasons for ending the tenancy as follows:

- The tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security and safety or physical wellbeing of another occupant or the landlord.
- The tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so was given.

The landlord's witness, the Building Manager, testified that the tenant had been seen on one occasion leaving the motorbike idling on the cement slab of the pool area which created a continual loud noise that echoed in the complex chambers. In addition, the witness testified that the motor bike had been seen outside of the tenant's unit on numerous occasions. The witness also testified that complaints had been received from other residents, that the tenant was also leaving his bike idling and playing loud music whilst conducting repairs on the motorbike outside of his unit.

The tenant testified that the One Month Notice to End Tenancy for Cause was seen posted to the front door of the rental unit on May 14, 2013. The tenant denied riding the motorbike into the complex and stated that he pushes it through the complex to get to the rental unit. The tenant testified that he has been parking his motorbike outside of the unit for three years and the landlord has never said anything about this. The reasons for doing this is because the landlord has failed to provide him with an adequate parking space; the original parking space assigned to him in the underground is leaking acid from the roof and the alternative space provided by the landlord is littered with debris that hinders the access to it. The tenant also stated that other tenant's were being allowed to park motorbikes outside their units and provided photographs showing a scooter parked outside a residential unit within the same complex.

The tenant's witness stated that the tenant had not driven the motorbike into the complex and that the witness had assisted the tenant in pushing the motorbike to the patio of the rental unit. The witness also confirmed that at no time had the motorbike been seen idling within the complex and that no illegal activity had taken place.

The landlord acknowledged that there was acid leaking from the roof of the underground car park onto the tenant's parking space but the tenant had been provided an alternative one. However, the landlord was not aware that the debris blocking the alternate car parking space provided to the tenant was of such an issue and had this been brought to the attention of the landlord by the tenant, it would have been corrected to provide sufficient access. The landlord also testified, in response to the tenant's

testimony about other residents being allowed to park motorbikes outside their rental units, that this is not allowed and if this was known or highlighted by the tenant then the landlord would have taken steps to correct this.

### Analysis

The landlord testified that the One Month Notice to End Tenancy for Cause was served on the tenant on May 13, 2013 in person. However, the tenant disputed this stating that it was posted on the door and was received on May 14, 2013. The landlord did not provide any evidence to prove the notice was served on May 13, 2013. Therefore, I accept the tenant's testimony that the notice was received on May 14, 2013 and the tenant had until May 27, 2013 to dispute the notice. As a result, I find that the tenant made the application to dispute the notice within the allowable time limit afforded to the tenant under Section 47(4) of the *Residential Tenancy Act* and Section 25(3) of the Interpretation Act.

The first reason selected by the landlord on the notice to end tenancy talks about an illegal activity that has created a disturbance to another occupant or the landlord. The landlord has provided an e-mail that was received from a tenant who complained about the noise being generated by occupants in unit 207. However, the author of the e-mail has not disclosed their identity and does not directly name the tenant as being responsible for the noise. Therefore, I am unable to consider this document as evidence in this Decision.

However, the landlord's witness testified that the tenant had been seen leaving his motorbike idling and as a result a number of complaints had been received about this. In addition, the landlord had issued the tenant with a breach letter referring to noise disturbances reported by the residents. The tenant did not respond to the landlord denying the details contained within the letter. As a result, I am satisfied that the tenant did create a disturbance in the way the motorbike was used to enter the complex. However, the reason on the notice specifically refers to an illegal activity that the tenant has engaged in that led to the disturbance. I find the landlord has not provided me with sufficient evidence to suggest that the tenant had engaged in an illegal activity that had led to the disturbance.

In relation to the second reason on the notice to end tenancy, the landlord has provided the sections of the tenancy agreement which state that tenant is not allowed to park motor vehicles outside the rental unit. The landlord has provided several photographs which show the tenant's motorbike parked outside the rental unit. The tenant does not dispute this but claims that the one parking space allotted is not useable. However, the

tenant has not taken any steps to address this issue with the landlord, choosing instead to go against a term of the signed tenancy agreement. Furthermore, the landlord warned the tenant about this in the breach letter issued to the tenant on April 24, 2013 and testified that the tenant has continued to park his motorbike outside the rental unit since this time, which was further verified by the landlord's witness.

Based on this evidence, I am satisfied that there has been a breach of a material term of the tenancy agreement and that this was not corrected by the tenant even after being served with a breach letter.

Therefore, I uphold the One Month Notice to End Tenancy for Cause dated May 13, 2013 issued by the landlord to the tenant.

### Conclusion

For the reasons set out above, I dismiss the tenant's application without leave to re-apply.

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: June 19, 2013

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Residential Tenancy Branch

