



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Witmar Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, CNR, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order cancelling a notice to end tenancy for cause, to cancel a notice to end tenancy for unpaid rent or utilities, and to recover the filing fee from the landlord for the cost of the application.

One of the tenants and an agent for the landlord company attended the conference call hearing and each gave affirmed testimony. The landlord also called one witness who gave affirmed testimony. The parties both provided evidentiary material prior to the commencement of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of the application or evidence were raised by either party.

### Issue(s) to be Decided

Are the tenants entitled to an order cancelling a notice to end tenancy for cause?  
Are the tenants entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?

### Background and Evidence

The landlord's agent testified that this fixed term tenancy began on May 1, 2013 and was to expire on April 30, 2014, and the tenants still reside in the rental unit. Rent in the amount of \$800.00 per month is payable on the 1<sup>st</sup> day of each month. At the outset of

the tenancy the landlord collected a security deposit from the tenants in the amount of \$420.00 which is still held in trust by the landlord company.

The landlord's agent further testified that the tenants have not paid rent for the months of June or July, 2013, leaving a balance outstanding of \$1,600.00. The landlord offers several options for paying rent, by delivering it to the office which is located in the complex, or by placing it in one of the locked boxes available in different locations which is retrieved several times during the day. On June 3, 2013 the landlord's witness served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy of the notice has been provided by both parties and it is dated June 3, 2013 and contains an expected date of vacancy of June 13, 2013 due to \$790.00 in unpaid rent that was due on June 1, 2013. The landlord's agent further testified that it is unclear why the rental amount on the notice is \$790.00 although the tenancy agreement specifies the monthly rent of \$800.00. No rent has been paid by the tenants since the issuance of the notice, and the landlord's agent was present and witnessed the notice being posted to the door of the rental unit.

The landlord's agent also testified that the tenants were personally served previously, on May 27, 2013, with a 1 Month Notice to End Tenancy for Cause. The parties have both provided a copy of that notice, which contains an expected date of vacancy of June 30, 2013. The reason for issuing the notice is stated to be: "Tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord." The notice was served by another employee of the landlord by personally handing it to one of the tenants, which was witnessed by the landlord's agent. On the evening of May 26, 2013 and carrying on to the early morning of May 27, 2013, the tenants had a domestic dispute that was severe in nature causing several police cars and an ambulance to attend. The female tenant was observed on the balcony screaming for help and was severely bruised and had an injured arm, which the landlord's agent believes is a result of the domestic dispute. A lot of tenants in the 52 unit complex were disturbed and the landlord has provided witness letters from other tenants who describe the disturbance.

The landlord's witness testified that the witness served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on June 3, 2013 by posting it to the door of the rental unit. The witness also served a 1 Month Notice to End Tenancy for Cause by personally handing it to one of the tenants on May 27, 2013. The witness also confirmed that the rental amount under the tenancy agreement is \$800.00 per month.

The tenant testified that the landlords have been inaccessible. The tenant attempted to contact the landlord right after the notice to end tenancy was found in the door of the rental unit. When the tenant spoke to the landlord's witness, the tenant was simply told that the tenant could apply for arbitration. The landlord's agents have not been willing to talk or discuss anything about the issues. Couples fight, and the landlords should be willing to discuss a settlement.

The tenant does not dispute that rent has not been paid for the months of June or July, 2013.

### Analysis

The *Residential Tenancy Act* requires a tenant to pay rent when it is due, and permits a landlord to issue a notice to end tenancy on any day after the date rent is due under the tenancy agreement. The tenant then has 5 days to pay the rent or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which must be no less than 10 days after the date that the tenant is served, or deemed served with the notice. In this case, I find that the tenants were served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on June 3, 2013 by posting it to the door of the rental unit. Documents served in that manner are deemed to have been served 3 days after posting, which I find is June 6, 2013. The tenant disputed the notice within the 5 days, but has no defence to failing to pay rent. The tenant testified that the landlord has been inaccessible, however the tenant spoke to the landlord's witness, an employee of the landlord, and the landlord's agent testified that rent can be paid by placing a cheque or money order in one of several locked boxes in the rental complex and the landlord's office is in the rental complex. I see no reason to cancel the notice to end tenancy.

With respect to the 1 Month Notice to End Tenancy for Cause, I have read the letters of other tenants and I find that other tenants had been disturbed by an incident, and one describes more than one incident. Generally, a landlord would be expected to give tenants a warning or caution especially where a tenancy is relatively new. However, in this case, I find that the incident required police and ambulance attendance, and the tenant has no defence to the issuance of the notice other than to say that couples fight and the landlords were not willing to discuss the matter. I see no reason to cancel the notice to end tenancy.

Having reviewed the evidence before me, I find that the tenants have failed to establish that either of the notices ought to be cancelled, and I dismiss the tenants' application in its entirety without leave to reapply.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

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: July 03, 2013

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Residential Tenancy Branch