



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC

### Introduction

This hearing dealt with an application by the tenant for orders setting aside a 1 Month Notice to End Tenancy for Cause and compelling the landlord to comply with the Act, regulation or tenancy agreement. Both parties appeared and had an opportunity to be heard.

### Issue(s) to be Decided

- Does the landlord have grounds to end this tenancy?
- Is the tenant entitled to an order that the landlord comply with the Act, regulation or tenancy agreement?

### Background and Evidence

This month-to-month tenancy commenced January 1, 2013. The monthly rent of \$725.00 is due on the first day of the month. The tenant paid a security deposit of \$362.50. There is a written tenancy agreement.

The tenant is 66 years old and lives on a modest pension. To supplement his income he “dumpster-dives” looking for recyclable products. He testified that he makes enough money from the bottles, cans, metals, tires and other recyclables he collects to pay for his gasoline and to offset some of his other automotive expenses. He also testified that he puts all items retrieved into his camper; he does not bring them into the rental unit.

The resident manager has been in her position for 14 years. It was clear from her evidence that she is a very conscientious manager.

There was an unpleasant incident between the tenant and the resident manager on April 4. A young employee of the landlord was putting a box spring into the dumpster. Instead of cutting up the box spring, the young man just laid it across the top, blocking access to the dumpster and the items in it. The tenant asked the young man to set the box spring to the side. The young man responded with a two word answer that translates (loosely) to “mind your own business”. The tenant told the young man that using language like that would get him into trouble on the street and that was no way to



talk to a tenant. The now very upset young man went into the office to report the incident to the resident manager.

When the resident manager came out to see the tenant she told the tenant that the young man should not have sworn at him, that the tenant should mind his own business, and that if he had a complaint about any staff member he should bring it to her, not talk to the employee directly. She testified that the tenant was extremely angry – yelling and waving his fist, which contained a pair of pliers, in her face. She testified that she found the tenant's tone of voice, the intensity of his anger, and his general demeanour very intimidating and frightening. She did say that the tenant neither uttered any threats towards her nor did he swear at her. She also testified that she could not recall if he moved towards her during this conversation or not. When the resident manager left the scene, the tenant was still yelling.

The tenant's version is that when the resident manager came out of the building she was very confrontational in her attitude and tone of voice. He said he did have pliers in his hand and he did pump his hand, in time with his statements, when he could get a word in edgewise with his side of events. He said he was very careful not to approach the resident manager and that he was more than twenty feet away from her during the entire conversation.

The resident manager responded that he was closer than twenty feet.

A few days later the resident manager wrote and delivered a detailed letter to the tenant. In that letter she set out her version of the episode and concluded: "This is not acceptable. It is extremely disrespectful to me and I need to let you know that should I encounter you speaking to me and shaking anything at me as you raise your voice you will be evicted."

On June 24 the resident manager asked the tenant not to take items out of the dumpster anymore. He told her he had a right to do so; she said we'll see about that. That evening the owner of the building approved a letter to go to the tenant formally requesting him to stay out of the dumpster. The letter was delivered on June 25.

On June 28 the tenant filed this application for dispute resolution asking for an order that the landlord comply with the Act, regulation or tenancy agreement. This application related to the tenant's desire to continue accessing this dumpster.

The resident manager testified that when the tenant served her with the application for dispute resolution he told her that if he was not successful on this application he would



come after her for the April letter. The tenant testified that he told her this situation could develop into more than she thinks its' going to. He said he was not threatening, only explaining what the legal consequences could be.

On July 15 the tenant wanted to cut a board into a smaller size to use as a shelf in his unit. Instead of sawing the wood in his kitchen or on his balcony he took the piece of wood out and an electric saw to the parking lot. He knew the plug-ins were live and he thought it would be cleaner and quieter to cut the wood out there.

When the resident manager saw the tenant setting up she went out to the parking lot and reminded him that the tenancy agreement specifies that the lot plug-ins should be used for block heaters only.

The resident manager said the tenant became very angry. He shook his finger at her and as he did so, his voice was rising. She told him not to shake his finger at her. The tenant backed off, dropped his voice and put his stuff away. Once again, the tenant did not swear at her nor did he utter any threats. She went back into the building.

The tenant says the resident manager came out yelling and snapping pictures. He said she was accusational in her approach. He did raise his voice but only so he could be heard. The tenant said he only wagged his finger at the heavens, in time to his sentences.

Both sides had another resident of the building testify about what they saw or heard on July 15. Neither saw or heard very much.

Immediately after this incident the resident manager prepared a 1 Month Notice to End Tenancy for Cause. The letter that was served with the Notice to End Tenancy stated, in part: "You raised your voice shaking your finger at me and told me I was looking for trouble. You also threatened to take me to court. This is not acceptable."

The resident manager arranged to have one of her employees accompany her when she served the notice to end tenancy on the tenant. The employee filed a letter stated the tenant was "agitated and threatening" toward the resident manager. No further detail was provided in the letter and this employee did not testify. In her oral testimony the resident manager said the tenant's demeanour on this occasion was very threatening and his voice was very agitated.



The tenant amended this application for dispute resolution to include a request for an order setting aside the notice to end tenancy. The landlord admitted service of the amended application on July 19, 2013.

There were three other points of irritation between the parties. The resident manager had given the tenant temporary permission to park his camper in the parking lot and after the tenant served the application for dispute resolution on her she asked him to remove it. He has complied with her request.

In her written material the resident manager also filed evidence to show that the tenant was not keeping his balcony tidy. At the hearing she testified that the tenant had since cleaned off his balcony.

Recently, the resident manager and the tenant had a conversation about where the tenant had parked his car. She politely asked the tenant to move his car from the shady spot he was in to his designated spot and the tenant politely told her was going to leave it in the shade and to write that down in her little black book. The tenant testified that he only intended to leave the car there while he went into his unit for a bite to eat and that other residents of the building do the same thing.

The resident manager described the tenant as a very threatening person; loud, abusive and power-tripping. She testified that she does not deserve to be threatened by any tenant, the tenant's behavior was not acceptable, she does not have to tolerate this kind of behaviour from any tenant, and she does not believe she should be treated by the tenant in this way. She also said she has never encountered a person so uncooperative. Finally the resident manager testified that she has deep concerns about her safety when this tenant is around.

The tenant described the resident manager as controlling – “toe this line with this girl or you’re out”. He said her demeanour towards him has not been very polite or very flexible. He says he is not a violent person but he has been adamant in his responses to her. He also stated that the vacancy rate is very low in this community and this puts the tenants in this building in a more vulnerable position.

#### Analysis

In order to end this tenancy the landlord must prove, on a balance of probabilities and to an objective standard, that the tenant has significantly interfered with or unreasonably disturbed the landlord. (Emphasis added).



The evidence on this issue boils down to two brief arguments; three months apart. The only significant evidence is the oral testimony of the two parties. The evidence is clear that on both occasions the tenant was upset and loud; that he did not use foul language; that he did not utter any specific threat to the resident manager; that he did not move towards the resident manager during these episodes; that when the resident manager told the tenant not to yell or shake his finger at her that he complied with her request; and that he waved his fist/hand/fist while he spoke. (I do not consider the fact that the tenant had a pair of pliers in his hand during the April argument significant as they were in his hand when the resident manager came out of the building. If he had picked them up during the argument I would have considered that significant.)

The resident manager was not able to provide any detail about why – in the absence of swear words, personal insults, or specific threats to her safety, or the fact that the tenant backed down when she asked him to do so – she found this tenant so intimidating and frightening.

I do note that she did frequently mention the tenant's threats to take an issue to the Residential Tenancy Branch or to the court, and that this concern was included in her letter with the notice to end tenancy. The Residential Tenancy Branch exists to settle disputes between landlords and tenants. Either side may, and do, file applications for dispute resolution. A threat to file an application or actually filing an application is not a ground for ending a tenancy.

It is my observation that both parties are strong –willed individuals who are not going to let anyone get the better of them. As a result there have been clashes between them. However, it takes more than a personality conflict to end a tenancy.

The evidence does not show that the tenant, on any objective standard, has significantly interfered with or unreasonably disturbed the landlord. The 1 Month Notice to End Tenancy for Cause dated July 2013 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.

As far as the tenant's other application there is nothing in the *Residential Tenancy Act*, the *Residential Tenancy Regulation* or the tenancy agreement states that an individual has a legal right to access a dumpster. The landlord provides the dumpster as an amenity for the tenants of this building. If the garbage was going into a locked room the tenant could not insist on access to the locked room so he could look for recyclables. That fact that the garbage is going into an open dumpster rather than a locked room does not change the fact that the garbage is going into a place provided by the landlord



and the landlord has a right to control access to it. The tenant's application for an order that the landlord comply with the Act, regulation or tenancy agreement is dismissed.

Conclusion

The 1 Month Notice to End Tenancy for Cause dated July 2013 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.

The tenant's application for an order that the landlord comply with the Act, regulation or tenancy agreement is dismissed.

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: August 07, 2013

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Residential Tenancy Branch



