



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Mt Seymour Lions Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

CNC FF

### **Introduction**

This hearing was convened in response to an application by the tenant to cancel a One Month Notice to End Tenancy For Cause (the Notice), dated July 18, 2013, with an automatically adjusted effective date of August 31, 2013 [Section 53 – Residential Tenancy Act (the Act)], and to recover the filing fee. The landlord orally requested an Order of Possession if I upheld the Notice to End or dismissed the tenant's application

Both parties attended the hearing and were given opportunity to present all relevant evidence, testimony and affirmed witnesses in respect to the dispute and to make relevant prior submission to the hearing and fully participate in the conference call hearing. The tenant was represented by counsel (the tenant). The parties were also permitted to discuss their dispute with a view to mutually resolving it, to no avail. The tenant stated their intention to move under prescribed circumstances to which the landlord could not agree and the matter proceeded on the merits and facts.

Both parties acknowledged receiving the evidence of the other. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

#### *Preliminary matters*

At the outset of the hearing the tenant proposed adjournment of the proceeding so as to obtain information from the Police in respect to their involvement on key dates. The landlord opposed adjournment on the basis it would be an unfair delay in resolution of the dispute and unfair to other occupants on the residential property. As a result of additional discussion I determined the hearing would proceed.

### **Issue(s) to be Decided**

Is the Notice to End tenancy valid and issued for sufficient reasons?

Should the Notice to End dated July 18, 2013 be set aside?

Is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee?

### **Background and Evidence**

This tenancy began February 01, 2010. The rental unit is one in a larger residential housing complex. The tenant is the applicant and their 11 year old son - identified by both parties as autistic and deaf.

Both parties submitted a copy of the Notice to End. The Notice was issued for the following reasons of Section 47(1)(d)(i);

*Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.*

The tenant disputes the Notice to End. It must be noted that in this type of application, the burden of proof rests with the landlord to provide evidence that the Notice was issued for sufficient reasons as stated in the Notice.

The parties each submitted a document evidence package amongst which, in part, are the tenancy agreement, signed and unsigned narratives by other occupants of the complex, letters to tenant from landlord, statements by the tenant and their witness, and photographs of the tenant during a medical examination in hospital. The parties each presented affirmed witness(s), and their own testimony.

*The landlord testified they were seeking an end to the tenancy because of what they categorized as an unsatisfactory history respecting the tenant over the 6 month period starting February, 2013 to an incident of July 17 / 18, 2013. The landlord claims that until mid-March 2013 the landlord received some reports from other neighbours being disturbed by loud banging and other noises, music, shouting, and sounds of sexual activity late night, 'communal' noises, and a male friend of the tenant seen undressed in the unit – all of which were claimed discussed with the tenant.*

The parties testified to the following in general agreement. In mid-March 2013, there was an incident in which, in the absence of the tenant and unbeknownst to them, a usual guest of the tenant entered the rental unit and ransacked the unit causing considerable damage. In the process the individual engaged in terrifying behaviour of shouting, ranting and threatening suicide and causing the complex to be locked down by Police. They climbed on the roof and Police resources of a helicopter and a negotiator were dispatched to quell the incident and remove the intruder. The landlord testified they received complaints from other tenants whom were shaken and clearly negatively affected by the incident. The tenant claims they were not home at the time and were unaware of the incident which purportedly was the result of the intruder having

a psychotic break and beyond anyone's control. The tenant testified the individual has not been permitted on the complex property since the incident.

Three (3) months later, in mid-June 2013 the landlord followed up the incident in March 2013 with a letter to the tenant highlighting the gravity of the incident in March and the impact on other families of the complex and concern the intruder would be allowed back onto the landlord's property. The letter also sought compensation from the tenant of over \$7500.00 for the damage caused by the intruder; however, this demand for payment has since been reconsidered. The letter ended as a "final warning" regarding disturbances by the tenant, or her special needs son, and guests.

The landlord also testified about an incident in mid-July 2013 which resulted in the 1 Month Notice to End for Cause to the tenant the following day. The landlord's account of the incident is from their understanding of what occurred from information they garnered from other tenants – specifically tenant M.P. The landlord claims the tenant was engaged in consensual violent sexual acts with 3 men over a period of many hours causing a disturbance. They claim loud sounds were heard from the tenant's unit, screaming and sounds of physical assault and other occupants of the complex expressed concern for the tenant's well-being. The Police were called and the landlord's source reported to them the Police told them they declined to intervene as the goings-on in the unit were consensual. After the Police departed the tenant was heard shouting and being emotional and seemingly angry toward other tenants.

In strong contrast, the tenant testified and presented their evidence that they were victim of an uninvited, unwanted, planned and concerted violent sexual assault / rape by 2 of their male guests, whom the tenant later learned also involved an unknown third man. The tenant testified the evening began uneventfully, then one of her guests drugged her, and they were forcibly restrained and sexually brutalized for hours during which time they were not always conscious or aware of what was occurring. The tenant confirmed and presented her statement of events which was in clear contrast to the landlord's version of events, including her vague recollections of events, pain, and attendance to the hospital for medical assessment. The tenant presented a series of enlarged and very personal photographs taken at the hospital the next day clearly displaying the tenant had endured physical trauma indicated by an abundance of bruising about all areas of their body. The tenant also provided evidence of a statement by one of her neighbours (S.O.) whom came to the tenant's aid on the evening in question. The evidence is that S.O. cared for the tenant overnight, and assisted the tenant in getting medical attention and made enquiries to Police and obtained new Police assistance, and generally acted on concern for the tenant and her child. S.O. corroborated the tenant's version of events. The neighbour also provided witness testimony to this hearing.

The landlord provided a letter dated July( )2013 and signed, from a nearby tenant in the complex (J.H.), which states the applicant, is 'inconsiderate" in their actions. The writer states the applicant has late night parties every night, is loud: swearing obscenities and

generally disturbing their family life.

The landlord provided a letter dated July 18, 2013 and signed, from a nearby tenant in the complex (M.P.) which states that during the mid-July 2013 incident they heard sounds from the applicant's unit which sounded like loud intercourse and "it didn't sound normal". They heard noises like, "hitting and strange noises". They called Police as, "it sounded like she was being battered". Police arrived and said the sexual commotion was consensual and could not act at the time. The applicant later came out and was yelling and swearing loudly. The writer stated the incident was the latest of other occurrences and which compromised their feelings of security. It is noted the statement, although signed, was written and dictated by the landlord.

The landlord provided an undated signed letter indicating it was received July 29, 2013 from a nearby tenant in the complex (R. and Y.B.) which commented on their experience of the incident in mid-July 2013. In particular, after midnight they could hear loud sounds and voices, screaming from the applicant, and swearing, "in an encouraging tone, not fearful, not angry", "not fighting". They did not call Police as they felt the applicant was enjoying the events and not in danger. This neighbour also provided witness testimony to this hearing.

The landlord provided 2 e-mails from 2 other neighbours dated August 18, 2013 (S.B.) and July 29, 2013 (L.H.) in response to questions posed by the landlord and in support of the landlord's position.

The landlord provided a copy of unsigned hand-written notes in a *Daytimer* from an associate of the landlord. The only areas of additional information were 2 summary entries in early and mid-February 2013 in respect to loud noise and foul language heard from the applicant's unit at 11:45 p.m. and 12:45 a.m. respectively.

*The landlord presented witness Y.B. – a neighbour of the applicant*

The witness provided testimony under affirmation. The witness confirmed they provided a written statement to the landlord some 10 days after the Notice to End had been given to applicant. The witness stated that on the night in question in mid-July 2013 they heard loud noises until late, swearing and shouting, sounds of slapping with a belt, and clearly heard the applicant repeatedly shouting "fuck you". The witness recounted their concern over the mid-March 2013 incident and was aware the applicant regularly had guests after midnight, and in particular a naked man was seen walking around in view of neighbours.

*The tenant presented witness S.O. – a neighbour of the applicant*

The witness provided testimony under affirmation. The witness confirmed they provided a written statement into evidence and that the contents of the statement are confirmed. The witness confirmed the tenant was not at her residence on the day of the mid-March 2013 incident. The witness stated that, despite a lack of

medical training, on the evening / morning of the mid-July 2013 incident the witness went to the applicant and they clearly appeared drugged, and were “totally incoherent”. They stated that everything they saw and understood about the incident indicated to them the applicant was “brutally raped” and that the applicant did not consent to the assault, and how she is still assisting the applicant and her son after the “trauma”. The witness stated that to her knowledge they were the only neighbour to physically see the applicant up close and attempt to personally assist them.

*The tenant presented witness M.C.. – previous landlord of the applicant*

The witness provided testimony under affirmation. The witness testified the applicant was her downstairs tenant for over 3 ½ years before 2010, during which period they never experienced issues with the tenant.

The tenant summarized that outside of the 2 subject “unfortunate incidents” of mid-March and mid-July 2013, the landlord has presented general accusations, vague incidents, inconclusive information, and unconfirmed statements through leading questions.

The landlord summarized they have presented a 6 month history of troublesome conduct on the applicant’s part that is inconsiderate and inconsistent with the family oriented residential property and that their conduct has repeatedly disturbed other tenants and therefore the applicant’s tenancy should end.

### **Analysis**

I have reviewed all testimony and document evidence presented. On preponderance of the evidence and on balance of probabilities, I accept the landlord’s evidence that during the past 6 months the surrounding tenants of the residential complex have been imposed by some of the applicants’ activities within their rental unit.

I find that landlords and occupants of multiple residential units must periodically balance the differences and rights of many, and that landlords may be called upon to manage a variety of expectations. I find that is why the Act does not prescribe that a single, or a tolerable, or an otherwise ordinary interference or disturbance is sufficient to end a tenancy; rather, disturbances and breaches of quiet enjoyment must be *significant or unreasonable*.

I accept the landlord and other residents were clearly disturbed by the incidents which unfolded in mid-March 2013. However the evidence is clear the applicant had very little to do with that incident – only knowing and previously permitting the disturbed intruder on the landlord’s property. The applicant was not home nor authorized the intruder’s presence. The landlord did not formally respond to that incident until 3 months later with the landlord’s *final warning* letter of June 12, 2013 – which I find was primarily an invoice for the damages - with added reminder to the applicant of their

obligation to respect the rights of others in the complex. As a result, I place no evidentiary weight on the March 2013 incident or the letter of June 12, 2013 as support for the Notice to End.

I further accept the other residents were disturbed by the incidents which unfolded in mid-July 2013. However, I prefer the evidence of the applicant and their witness, S.O., over that of the landlord. I accept, on balance of probabilities, the applicant's evidence they were not a consenting or authorizing participant to what has been clearly portrayed as a brutal assault - which could not help but disturb the surrounding residents. I find the applicant's witness (S. O.) had first hand insight into the activities that evening, whereas the landlord did not; relying on third-hand information before issuing the Notice to End. I find that some of the landlord's evidence, such as parts of the written statement from M.P., could support the applicant's version of events. I find it was available to the landlord to have obtained more information directly from the source which labelled the events were authorized by the applicant, and in concert with them – or “consensual” - before determining to end the tenancy. I accept the landlord acted in good faith, however, as a result of all the above, I place no evidentiary weight on the July 2013 incident as support for the Notice to End.

I find that the landlord's narratives from other tenants present stale information of circumstances prior to the Notice to End now brought forth in late response to the landlord's request for evidence to support their Notice. This information was not significant enough to seek an end to the applicant's tenancy before the events in mid-July 2013 and would normally have remained so to date. I find this evidence is insufficient to support a Notice to End for cause.

I am not convinced that before the mid-July 2013 incident the landlord received significant issues or complaints about the applicant. I expect the landlord would have otherwise presented that prior evidence, but did not. I find the bulk of the landlord's evidence supports that the mid-July 2013 incident was the defining event and key reason for issuing the Notice to End and that the evidence in support of the Notice was hastily gathered on the day they issued the Notice, and subsequently. I find that if this event had not occurred the landlord would still be waiting for the applicant to *significantly* breach the landlord's “final warning”. In different words, I find the landlord may well have continued to balance their expectations, but the tenancy would not now be under threat. I find there was insufficient cause to end the tenancy before mid-July 2013, and I have not been presented with sufficient cause to now do so.

I further find that neither the spirit of the legislation under which the landlord seeks to end the tenancy, nor the legislators for Section 47 of the Act, ever contemplated that the applicant's dire circumstances of mid-July 2013 should be the test for 47(1)(d)(i).

As a result of all the above, I find the landlord has not met their onus in this matter. I find that the landlord has not provided evidence that the Notice to End was issued for *sufficient* reasons stated in the Notice to End, and as a result I am unable to establish

that the landlord issued the tenant a Notice to End for sufficient cause. Therefore, **I Order** the Notice to End dated July 18, 2013 **is cancelled**, and the tenancy continues.

Having so determined, the tenant should be mindful they came perilously close to losing their tenancy and the particulars of this matter may be used to support a future cause to end the tenancy. It is available to the tenant to reflect on their intention to seek alternate accommodations. If necessary, the landlord is at liberty to issue a new valid Notice to End if they have *sufficient* reasons.

As the applicant was successful in their claim they are allowed to recover their filing fee of \$50.00.

### **Conclusion**

The tenant's application is allowed. **I Order** the landlord's Notice to End is **set aside and is of no effect**. The tenancy continues.

**I Order** the tenant may deduct **\$50** from a future rent in satisfaction of the filing fee.

**This Decision is final and binding on both parties.**

*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: September 04, 2013

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Residential Tenancy Branch

