



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Dawson Place Apartments  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OLC, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a One Month Notice to End Tenancy for cause; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant, the tenant's agents; two witnesses for the tenant, the landlord, the landlords Lawyer and the building manger attended the conference call hearing. The required parties gave sworn testimony and were given the opportunity to cross examine each other and witnesses on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Preliminary Issues

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that not all the claims on the tenant's application are sufficiently related

to the main issue to be dealt with together. I therefore will deal with the tenant's application to cancel the Notice to End Tenancy and the remaining sections of the tenants claim will not be dealt with at this hearing.

Issue(s) to be Decided

Is the tenant entitled to have the One Month Notice to End Tenancy cancelled?

Background and Evidence

The parties agree that this month to month tenancy started on September 01, 2001. Rent for this unit is now \$565.00 per month and is due on the first day of each month.

The building manager testifies that the tenant was served a One Month Notice to End Tenancy on July 24, 2013. This Notice has an effective date of August 31, 2013 and provides the following reasons to end the tenancy:

- 1) *The tenant or a person permitted on the residential property by the tenant has*
  - (i) *Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
  - (ii) *Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.*

The building manager PG testifies that there was an incident on May 17, 2013 where the building manager was vacuuming the hall outside the tenants unit when a dog was heard barking. Pets are not allowed in the building so the building manager knocked on the tenant's door. A man opened the door and said there was not a dog in the unit. PG testifies that he said the dog had to leave as dogs are not allowed in the unit; someone else came and said they were leaving in a few minutes. PG testifies that he returned to his vacuuming and after 10 minutes did not see anyone leaving the tenants unit with the dog so PG returned to the tenants unit and knocked again. Someone shouted from

inside asking what PG wanted. He continued to knock and someone answered the door and started to argue with PG becoming aggressive and asking PG what he was going to do about it. PG testifies that he retaliated and said 'do you want to know what I can do about it'.

PG testifies that finally two people left with the dog however PG testifies that he was still vacuuming and felt there was a blockage on the cord, one of the tenant's guests was walking down the hall stepping on the cord. This guest's companion was carrying the dog and tried to apologize saying they should not have brought the dog in. The other guest said that they did not have to talk to PG and that PG should watch out how he talks to the guest's mother. PG testifies that throughout the incident he was firm but polite and he does not know why the tenant's guests were so threatening. PG testifies that a few days later he was working outside when the tenant came out to apologies saying she should not have let the dog in. PG testifies that the tenant also said her son AD had aggression issues and promised it would not happen again and that if her son AD wanted to see her then he would meet her elsewhere as he would not be welcome at her unit. PG testifies that he told the tenant that he had already written a warning letter and had run that by the owner of the building so PG would still have to deliver the letter to the tenant but then that would be an end to it. PG testifies that this was a friendly conversation between them.

PG testifies that there was another incident in July, 2013. PG testifies that he was working outside the building when the tenant and the tenant son MD got into the tenants son car parked in the visitor's area and then moved the car to a no parking area. The tenant and her son got out of the vehicle and PG testifies that he asked the tenants son to move his vehicle. PG testifies that he could have asked more politely but when the tenants son said why do you have to be such a jerk PG then told the tenants son to move his f\*\*\* vehicle twice. PG testifies that the tenant's son wanted to punch PG and PG told the son to do what he had to do. The tenant's son retreated and moved his vehicle.

PG testifies that the tenant's son was provocative and threatening and PG felt this was a risk to his safety.

The tenant's agent MD asks the building manager PG that when PG approached the car with the tenant and the tenant's son did PG rush over. PG responds that he was at a distance and walked over to ask the tenants son to remove his vehicle. Then the tenant's son responded that he would punch PG in the face.

The tenant testifies that she had informed PG that it was her 85th birthday and her family was coming over to help the tenant celebrate. When PG first knocked on the door the tenant testifies that she did not pay any attention as she was talking to family. When PG knocked again it was the tenant who answered the door and PG spoke loudly into the tenants face shouting that the dog had to go now. The tenant testifies that one of her sons AD told PG to watch how he spoke to his mother. PG walked away and muttered that he would make trouble for the tenant. The tenant testifies that they left shortly after that to attend her birthday celebrations.

The tenant testifies that the incident that happened in July occurred when her son had picked her up to go and play golf. They were in her sons vehicle when they realized they had forgotten the camera so her son pulled up in an area in the shade that is not designated as another tenants parking area, does not have any no parking signs and is not a fire lane. People often use this area to stop for short periods in their cars. The tenant testifies that PG ran up from the parking lot yelling and swearing and the tenant's son asked him why he was being such a jerk. The tenant testifies that she went in and got the camera and they drove away. The tenant testifies that none of her family have ever threatened PG.

The tenant testifies under cross examination that she did not ever tell PG that her son was aggressive and she would never tell a stranger anything bad about her family.

The tenant calls her witness MD who is one of the tenant's sons. The witness testifies that they had arrived at his mother's unit for her birthday; his brother went to get his small dog out of the car to give it some water when there was a knock on the door. The dog then gave a bark. There was a man at the door who started to say something about having a dog in the unit. The witness testifies that he stated that his mum does not own a dog and the door was closed. Within 10 minutes the same man knocked on the door and the tenant opened the door. The witness testifies that he heard the man raising his voice to his mother demanding that the dog leaves now. The witness testifies that his brother told the man that they were leaving shortly and the man again said loudly that the dog had to leave now.

The witness testifies that two months later in July he went to collect his mum as they had planned to go golfing. He parked his car in the visitors spot and he and his mum went to get golf clubs from his mum's car. The witness testifies that he realized he had forgotten his camera and so his mum told him to park in the shade while she went to get it. The witness testifies that as his mum got out of the car PG came running up very agitated and yelling for them to move the car now. The witness testifies that as he started to get out of the car PG shouted that he had to move the car immediately and when PG was asked why, PG stated because MD was rude to him. The witness testifies that PG was confrontational telling the witness to move the F\*\*\*\* car. PG was trying to provoke a confrontation and they did get into an argument. The witness testifies that he asked PG why he was being such a jerk and said if PG touches him he would punch him back. The witness testifies that he moved the vehicle back, they got the camera and left.

The Lawyer for the landlord asks the witness if PG came running up to the witness. The witness replies that PG was either running or walking fast. The lawyer asks the witness if PG was holding a broom. The witness responds that he did not notice.

The tenant calls the second witness who is her son AD. The tenant's agent asks the witness if the witness could describe what happened on May 17, 2013. The witness

responds that when PG first came to the door his brother answered the door. The second time PG came to the door his mother answered the door and was apologizing for having the dog there. PG was confrontational with his mother. The witness testifies that he went over and told PG that they would be gone in 10 minutes but PG said they had to go now. The witness testifies that he asked PG what he would do and PG said he would make trouble for them. The witness testifies that when they left PG was in the hall and the witness told PG that he should be nicer to his mother. The witness testifies that he was with his partner at the time and she was holding the dog and was saying nice things to PG. The tenant's agent asks the witness to describe his demeanor while speaking to PG. the witness responds that he was trying to calm things down as PG was very agitated and the witness was telling PG that they needed a few minutes to get their shoes and other stuff before they could leave. The tenant's agent asks the witness if the witness stepped on the vacuum cord in the hallway. The witness responds that if he did it was not intentional and he does not recall seeing a cord.

The landlord's Lawyer asks the witness if the witness knew that pets were not allowed. The witness responds that he knew residents were not allowed to have pets. The lawyer asks the witness if he has taken his dog there before. The witness responds on a few occasions.

The landlord orally requests an Order of Possession effective at the end of October. The tenant's agent requests that the Notice to End Tenancy is set aside.

### Analysis

The parties presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

The onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this matter as the landlord is claiming that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant then the burden of proof falls to the landlord. Having reviewed the documentary evidence and the testimony of both parties and witnesses I find the landlord has insufficient evidence to support the reasons given on the Notice. The landlords building manager describes his version of the events and the tenant and the tenants witnesses describe a different version of events. Both versions are equally probable. Without further corroborating evidence from the landlord to support his building managers version of the events that happened in May and July then the landlord has not meet the burden of proof, on a balance of probabilities.

Therefore it is my decision that the tenant's application to cancel the Notice to End Tenancy for cause is upheld.

### Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated, July 24, 2013 is cancelled and the tenancy will continue. As the tenant has been successful in setting aside the Notice, the tenant is entitled to recover the **\$50.00** filing fee for this proceeding and may deduct that amount from the tenants next rent payment when it is due and payable to the landlord.

The reminder of the tenant's application is dismissed with 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: September 12, 2013

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Residential Tenancy Branch



