



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenant on September 16, 2013. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on September 27, 2013. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to an order cancelling a one month Notice to End Tenancy dated September 16, 2013 and setting the end of tenancy for October 31, 2013?

### Background and Evidence

The tenant moved into one of the rental units on the rental property on October 1, 2011. On April 1, 2013 the tenant moved from the previous rental property to the present rental unit. The tenancy agreement provided that the tenant(s) would pay rent of \$800 per month payable on the first day of each month. The tenant(s) paid a security deposit

of \$400 at the start of the tenancy. The tenancy agreement attached a Crime Free Addendum which provided that the tenant would not engage in any criminal activity including “(d) assault or threatened assault” and that a single violation of the above provisions shall be the breach of a material term of the tenancy agreement and shall be good cause for a Notice to End Tenancy.

The rental property is composed on 47 rancher style houses. Four of those house are duplexes.

#### Grounds for Termination

The second page of the one month Notice to End Tenancy which sets out the grounds for termination was not included in the materials filed by both parties. However, the parties stated that the grounds set out in the Notice to End Tenancy is found in section 47(1)(d) and (e) of the Residential Tenancy Act which provide as follows:

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Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(d) 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, or
- (iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- (i) has caused or is likely to cause damage to the landlord's property,

- (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

### Analysis

The allegations of misconduct if proven are serious and if proven may very well amount to sufficient cause to end the tenancy. The landlord alleges that the tenant has threatened and assaulted other tenants in the rental property and the landlord. The landlord also alleges the tenant is often intoxicated and drives scooter throughout the park which intoxicated. The tenant denies the allegation. He submits the landlord has solicited letters of complaint from the tenant and he denies he assaulted other tenants or the landlord. There is no evidence of the police being called or any charges being laid.

The landlord has the burden of proof to present relevant evidence at the hearing that establishes sufficient cause to end the tenancy on a balance of probabilities. An arbitrator must determine whether there is sufficient cause as of the date of the Notice. An arbitrator is not permitted to consider conduct after that date. If there is misconduct after the date of the Notice the landlord is the right to serve another Notice based on that misconduct.

Much of the evidence presented by the landlord is in the form of letters from other occupants on the residential property. While relevant evidence in the form of letters is admissible, an arbitrator must exercise care in assessing the weight to be given to those letters where the writer was not present to testify and be cross examined at the hearing and where the evidence was not taken under oath especially where the tenant denies the allegations. The law recognizes that the termination of a tenancy is a serious event and an arbitrator must ensure there is reliable evidence to justify the termination.

The landlord relies on a letter dated September 23, 2013 from EK. One of the incidents he alleges occurred after the date of the Notice and cannot be considered in determining whether the Notice dated September 16, 2013 is valid. His letter states that one night in the spring and that after making eye contact with the tenant, the tenant came up to him smelling of booze and threatening to hit him in the face. The tenant denies this incident and any other. EK was not present at the hearing to be questioned and his evidence is not under oath. The police were not called. I note that letter presented by another SH, another occupant of the park alleges that EK was screaming, yelling and threatening. In that letter SH alleges the tenant came running out of his yard screaming at the tenant and accusing her of being a troublemaker. Her letter is unsworn and she did not attend the hearing. I determined the unsworn evidence of EK and SH in the form of letters are not reliable where they did not testify in person and make themselves available to be questioned.

The landlord relies on letter from NB which alleges she heard the tenant screaming at another resident of the park DM. That letter is unsworn and NB did not attend to testify. The letter from DM describes a conflict which she was having with the tenant over the feeding of stray cats. The tenant had asked to feed the stray cats at a different location as the tenant and his daughter is allergic to cats. The tenant denies yelling at DM. The letter from DM does not describe being yelled at. Both letters are unsworn and both witnesses did not attend the hearing. I determined this evidence is not reliable.

The most serious evidence is that of the landlord PR. She testified when she was in a van being driven by RC, the tenant approached the van with his fist clenched and threatened to punch her. RC confirmed her testimony. The tenant was upset with the landlord because she was allegedly spreading rumors that the tenant was leaving his young daughter unsupervised. The tenant denies that he threatened the landlord although he does not dispute that a disagreement took place. The police were not called. Witness #1 who was a temporary manager while PR was in hospital was called on behalf of the tenant and she testified she witnessed the entire event at a distance of

approximately one house length and that the tenant did not threatened the landlord. I determined that landlord failed to satisfy the burden of proof in this situation. The landlord alleges the tenant is driving his scooter on the property while intoxicated and this is a threat to other residents. The tenant denies this. The police have not been called. The two breach letters given by the landlord do not refer to this. The landlord has failed to prove this allegation.

The termination of a tenancy is a serious action. Care must be taken by an arbitrator in determining the conduct was sufficiently serious to warrant such an order. The landlord has the burden of proof. In the circumstances I determined the landlord has failed to present sufficient reliable evidence to amount to sufficient grounds to end the tenancy.

The landlord presented two breach letters. The first breach letter relates to an incident on June 21, 2013 which was referred to in the above paragraph. The tenant testified he was not served. The second breach letter is dated September 16, 2013. That letter alleges assaults on a number of individuals. Two of the individuals do not live in the rental property and cannot be considered. It also alleges an assault against EK and DM which has been considered above. The letter alleges the landlord threatened the landlord. Both letters contain the following statement:

“It is my option to give you notice to end our Tenancy Agreement, however, I have chosen in this case to give you notice to immediately correct this breach without further delay. I reserve the right under the Residential Tenancy Act to end the tenancy if you fail to correct the said breach within a reasonable time after having been given this written notice. Your cooperation in this regard is appreciated.

The one month Notice to End Tenancy which the landlord relies on is dated September 16, 2013. It is unfair for the landlord to give a Notice demanding that the tenant correct a breach without further delay and reserving the right to serve a Notice to End Tenancy if the breach is not corrected within a reasonable time and at the same time serve the

Notice to End Tenancy. The conduct of the landlord is inconsistent as the landlord has failed to give the tenant a reasonable time to correct the breach.

This was a difficult case and the decision was arrived at primarily because the landlord failed to present sufficient reliable evidence to amount to sufficient grounds to end the tenancy. However, there is no justification for threats and assaults and misconduct through intoxication. Had the landlord been able to present more reliable evidence in the form of other residents testifying, the result may very well have been different.

Determination and Orders

**As a result I ordered that the Notice to End Tenancy dated September 16, 2013 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.**

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: October 31, 2013

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Residential Tenancy Branch

