



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Fraser Marine Drive Holdings  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause.

Both the landlord's property manager and the tenant attended the teleconference hearing and gave affirmed evidence. A witness for the tenant also attended the hearing gave affirmed evidence.

### Issue(s) to be Decided

Should the notice to end tenancy be cancelled?

### Background and Evidence

The parties agree the tenancy started August 1, 2011. The tenant was initially obligated to pay \$675.00 in rent monthly in advance on the first day of the month. The rent has now increased to \$686.00 per month.

The landlord's representative gave evidence that she personally served the tenant with a Notice to End Tenancy for Cause (the "Notice") on December 31, 2013. The Notice specified an effective date of January 31, 2013 and provided the following reasons for issuing the Notice:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

The landlord's representative gave evidence that her company took over managing the building in July 2013. At that time, she inspected all of the rental units, including the tenant's rental unit. The tenant was present during the inspection and raised concerns about the amount of his electricity bills. The tenant asked her if he could move to a

different unit in the building. The landlord's representative says she told him he could not move to a different unit because of the condition of his current rental unit. The landlord's evidence is that the tenant's current unit was extremely dirty and the tenant had built a large structure in the middle of the unit that damaged the walls and ceiling.

The landlord's representative gave evidence that the tenant yelled at her, using profanities. She said she could not get a word in, and simply left his rental unit. She said the tenant followed her into the hallway and continued to yell at her using profanities.

The landlord's representative gave evidence that the tenant told the resident manager in approximately November 2013 that he intended to move out. In response, the resident manager gave him a "pre move-out letter" with instructions on the moving out procedures. The landlord's evidence is that the "pre move-out letter" was not a promise of a different suite in the building. The landlord's representative gave evidence that the resident manager knew that the property manager must approve a tenant moving to another suite, and therefore would not have promised the tenant he could have a different suite.

However, the landlord's representative says the tenant thought he had been approved to move to a different suite. She says he telephoned her on December 24, 2013 and told her the resident manager had approved his move to another suite. She says she told the tenant they had no request from him in writing and would not approve a move request because of the condition of his current rental unit. She says she also told him that it was not the resident manager's decision. She says the tenant was not happy and hung up on her.

The landlord's representative says the resident manager called her shortly afterward. The resident manager told her the tenant had come down to the office and behaved aggressively toward her. The landlord's representative gave evidence that the office is a very small room with only one door and no window; tenants usually stand in the hallway to speak to the resident manager. Her evidence is that the tenant came right into the office and yelled at the resident manager, calling her rude names. The resident manager told her she became scared and asked the tenant to leave the office. However, the tenant would not leave the office and so the resident manager started to call the police. At that point, the tenant left the room and the resident manager called the property manager. The property manager told the resident manager that if the tenant came back to the office, she should dial 911 and then call the property manager back.

The landlord's representative says the resident manager told her the tenant returned to the office shortly afterward with his uncle who is also a tenant in the rental complex. She says the resident manager told her the two men accused the resident manager of "playing games" with the tenant regarding the tenant's wish to move to another suite and regarding the tenant's uncle's buzzer not being programmed. Her evidence is that the resident manager is a small Filipina woman who felt threatened by the tenant's aggressive behaviour. The resident manager lives in a different building from the office. She wished to go home that evening but the two men were outside the building and she was intimidated.

The landlord's representative gave evidence that the resident manager called her and the resident manager's voice was shaking. The landlord's representative says she told the resident manager to call the police and to call another tenant for support. The police were called and they spoke to the tenant and his uncle.

The landlord's representative gave evidence that another employee, the maintenance man, also reported to her that the tenant had yelled and used profanity toward him. Her evidence is that all three reasons indicated on the Notice relate to the tenant's aggressive behaviour toward building staff, two of whom are also occupants of the building.

The tenant gave evidence that in approximately October 2013 the resident manager helped him to complete a written request to move to another suite. He said he received a piece of paper that indicated he had been approved. He said the resident manager told him he would be allowed to move to a different unit. He said she told him she would give him another piece of paper to confirm his move to the new rental unit.

The tenant gave evidence that he went to the office on December 24, 2013 to ask the resident manager if he was still moving. He said she told him he was not moving because there were no electrical problems with his current rental unit. The tenant said he started talking about his electricity bills and the resident manager told him to leave or she would call the police. He said he wanted his uncle to wait for the police with him, and they did so outside the building.

The tenant denies yelling at or threatening the resident manager. Asked if he was angry during their conversation, he said he was not. Asked if it was a regular conversation, he said it was and he was surprised when she called the police. He said he had not had trouble with the resident manager before this incident and after the incident, she continued to say "hi" to him when they met. He said she does not seem scared of him.

Asked if he had ever yelled at the resident manager prior to December 24, the tenant said he had not. He said he did raise his voice with the property manager during their discussion in July 2013 because she would not let him explain. He denies swearing at her.

Asked if he had ever yelled at the caretaker, the tenant said he had not. He said the caretaker is a friend and he has visited the caretaker in the caretaker's rental unit.

### Analysis

Where a landlord seeks to end tenancy for cause, the onus is on the landlord to prove cause on a balance of probabilities.

The landlord and tenant have provided contradictory evidence regarding the tenant's behaviour toward the property manager, resident manager, and building caretaker. I accept the landlord's evidence over the tenant's evidence for two reasons. First, there is no apparent reason why the landlord's representative would exaggerate in her descriptions of the tenant's behaviour toward her or the descriptions reported to her by other employees. Secondly, the landlord's description of events is more plausible than that of the tenant. For example, the tenant agrees the resident manager asked him to leave the office during their interaction on December 24, 2013. It is not plausible that the resident manager would ask him to leave the office if they were simply having a calm disagreement over electricity bills. It is more likely that the resident manager asked him to leave because she was intimidated by his behaviour. Further, the landlord's representative gave evidence that she heard the resident manager's voice shaking after her encounter with the tenant.

I find that the tenant did engage in the aggressive behaviour that the landlord's representative described, including yelling and swearing at her and other building employees. At issue is whether such aggressive behaviour is adequate cause for ending the tenancy for one of the specified reasons.

I find that the tenant's behaviour constitutes significant interference with and unreasonable disturbance of other occupants and the landlord, within the meaning of Section 47(1)(d)(i). The fact that the tenant yelled and swore on several occasions is sufficient to constitute significant interference and unreasonable disturbance. The landlord has therefore proven that cause exists to end the tenancy.

Accordingly, I dismiss the tenant's application to cancel the Notice.

Conclusion

The tenant's application to cancel the notice to end tenancy 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: February 25, 2014

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Residential Tenancy Branch

