



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LANGLEY KINSMEN HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the commencement of the hearing, the landlord orally requested an Order of Possession.

### Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession for cause?

### Background and Evidence

The month-to-month tenancy commenced in July 2008. The rental unit is located in a multiple family complex and the landlord is a non-profit housing society. The tenant's rent is subsidized and the tenant is currently required to pay rent of \$208.00 per month. Clause 1 of the tenancy agreement indicates the tenancy agreement includes "Crime Free Multi-Housing". With the tenancy agreement was a copy of a document entitled "Residential Tenancy Agreement Addendum for Crime Free Housing" that the tenant signed on May 12, 2010.

The landlord issued a 1 Month Notice to End Tenancy for Cause on January 8, 2014 (the Notice). The landlord testified that the tenant received the Notice on January 8, 2014 whereas the tenant had submitted that she received it on January 9, 2014. Giving the benefit of the doubt to the tenant I accepted that the tenant filed this Application for

Dispute Resolution to dispute the Notice within the time limit permitted by the Act and I continued to hear the merits of the dispute.

The Notice has a stated effective date of February 12, 2014 and indicates the following two reasons for ending the tenancy:

- 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.

Below, I have summarized the respective positions of the parties:

### **Landlord's position**

The landlord submitted that on January 7, 2014 two residents of the complex came to the landlord's office to report an incident that took place on January 6, 2014. The landlord was informed that the tenant grabbed the complainant's child by the face in the presence of a witness. Further, when the witness intervened the tenant hurled profanities and rude gestures toward the witness. The tenant also yelled profanities at the complainant when she came to see what was happening. The two residents informed the landlord that the tenant was arrested and released with a "no contact order" prohibiting her from contacting the two residents or their children.

Both residents provided written statements to the landlord. As well, a photograph of the tenant grabbing the complainant's child by the face was taken by another child that as present during the altercation and the photograph was provided to the landlord. The landlord was also provided with the name of the police officer who attended and the police file number.

The landlord took that above described information to the housing society and the society concluded there were sufficient grounds to evict the tenant for assaulting a resident child while on the residential property.

As evidence for this proceeding, the landlord provided copies of: the statements of the other residents; the photograph taken on January 6, 2014; the tenancy agreement and crime free housing addendum; and, the police officer's card with file number.

### **Tenant's position**

The tenant was of the position the landlord should have investigated the complaint by talking to the tenant before issuing the eviction notice.

With respect to the events that took place on January 6, 2014, the tenant explained that she felt she had no choice but "to take matters into her own hands" because the parents of the children living in the complex are not sufficiently supervising or disciplining their children and that these children have been bothering the tenant and vandalising property. The tenant was also of the position that the landlord was not taking appropriate action to deal with disturbances and vandalism because the landlord spends too much time doing "stupid things".

The tenant submitted that the subject child was responsible for kicking a soccer ball against the wall of her unit on one occasion and she had been the subject of several instances of "Nicky Nicky Nine doors" – a prank where a person rings someone's door bell and then runs away. The tenant stated that she had complained of the "Nicky Nicky Nine doors" to the landlord on one occasion but the landlord did not react to the tenant's satisfaction. Further, the tenant felt as though she was unable to approach the parents of the children bothering her as the parents are "uncivil".

The tenant takes the position that it is unfair for the landlord to issue her an eviction notice when there was no reaction to her complaints about unruly behavior of children living in the complex.

As to what took place on January 6, 2014 the tenant described the following events:

- The tenant's door bell rang and nobody was at the door
- The tenant found one of the resident children (referred to by initial S.) in the common area and told him to leave her alone. In response, the child told her she was a liar.
- The tenant returned to her unit and saw S. talking to the child and S. was "making faces". The tenant explained she "knew" they were talking about her.
- The tenant went back out into the common area and grabbed the child by the ear and pinched it but he tried pulling his face away. The tenant explained that she did not intent to hurt the child but only wanted to get his attention.
- The tenant also chased after S. but did not grab him.
- Another resident came out and started yelling for the tenant to stop hurting the child. The neighbour tried getting between the tenant and child. The tenant told the resident to go away and mind her own business.

- The tenant called the police to tell them her side of the story.
- Later, the police attended the property, gave the tenant a Miranda warning, and took the tenant into custody.
- The tenant was released by police later that evening with a no-contact order with S. and the child and their parents.

The tenant acknowledged that she has a court date scheduled for deal with a charge of assault.

With respect to the photograph provided by the landlord as evidence, the tenant's only response was "no comment".

The tenant acknowledged that she went too far but tried justifying it was saying it is because the landlord did not do enough. The tenant was of the position that "IF" the child stays away from her in the future such an incident would not happen again.

### **Landlord's responses**

The landlord acknowledged an eviction notice was issued before talking to the tenant but explained the landlord was satisfied by the statements of other residents and the photograph that an eviction was warranted.

The landlord acknowledged receiving one complaint from the tenant about someone ringing her doorbell; however, the landlord explained that the landlord did not know the identity of the person(s) causing such a disturbance. The landlord did issue a general letter to all tenants about the conduct of children living on the property.

Further, the landlord only learned of the soccer ball incident and allegations of vandalism the day of the hearing.

### **Tenant's responses**

The tenant acknowledged that a general letter was sent out to residents of the complex but the tenant felt such action was ineffective. The tenant explained that she did not make more than one complaint to the landlord about children disturbing her as she felt the landlord was not going to do anything.

### Analysis

Under section 47 of the Act, a landlord may end a tenancy for cause by serving the tenant with a 1 Month Notice to End Tenancy for Cause. There is no specific requirement in that Act that requires the landlord to communicate with the tenant prior to issuance of a 1 Month Notice except where the landlord is ending the tenancy for breach of a material term of the tenancy agreement. Since the landlord is not seeking to end this tenancy for breach of a material term I find the landlord was within its purview to accept the evidence presented to the landlord by other residents of the residential property in deciding to issue the 1 Month Notice as the Notice is disputable. Therefore, I reject the tenant's position that the landlord had to talk to her before issuing the Notice.

Where a Notice to End Tenancy comes under dispute, as in this case, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the notice. Where more than one reason is indicated it is only necessary to prove one of the reasons indicated.

The burden of proof is based upon the balance of probabilities, which means more likely than not. It is important to note that this burden of proof is much less than the criminal standard which is beyond a reasonable doubt.

It is also important to note that section 75 of the Act provides that Rules of Evidence do not necessarily apply in dispute resolution proceedings. Below, I have reproduced section 75 of the Act.

#### **Rules of evidence do not apply**

**75** The director may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be

(a) necessary and appropriate, and

(b) relevant to the dispute resolution proceeding

I have considered all of the evidence presented to me, including the written statements of the other residents of the housing complex. In doing so, I find the written statements, the tenant's own testimony, and the photograph, are consistent in establishing that the tenant physically grabbed a resident child by the ear or side of the face while on the residential property on January 6, 2014. I also find, based upon the expression of the

child's face, as it appears in the photograph, that the grabbing of the child's ear or face likely evoked feeling of pain and fear. I find such conduct is not justifiable and the tenant was not reacting in self defence.

Of further concern is that the tenant indicated that her willingness to refrain from future altercations with the child is conditional as it depends upon whether the child "stays away" from her in the future. Given this is a housing complex where the child, S. and other children reside and all residents are permitted access to common areas I find that it is entirely likely the tenant will come into contact with the child, S., their parents, and other children in the future should the tenancy continue.

Given the above, I find the landlord has established that the reasons indicated on the 1 Month Notice are applicable in the circumstances. Therefore, I uphold the Notice and dismiss the tenant's application.

I note that the effective date that is indicated on the 1 Month Notice was incorrect and, pursuant to section 53 of the Act, it is automatically changed to read February 28, 2014.

Section 55 of the Act provides that an Order of Possession shall be granted to a landlord where:

- The tenant files to cancel a notice to End Tenancy and the application is dismissed; and,
- The landlord orally requests an Order of Possession during the scheduled hearing.

I find the criteria for section 55 have been met since I have dismissed the tenant's application to cancel the Notice and the landlord orally requested an Order of Possession at the commencement of the hearing. Therefore, I provide to the landlord with this decision an Order of Possession.

Given the date of this decision, the Order of Possession shall be effective two (2) days after it is served upon the tenant.

### Conclusion

The tenant's application to cancel the Notice to End Tenancy has been dismissed.

The landlord's request for an Order of Possession has been granted. I have provided the landlord with an Order of Possession effective two (2) days after service.

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: March 5, 2014

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Residential Tenancy Branch

