



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Kenmark Investments  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

CNC, MNDC

### Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and for monetary Order for money owed or compensation for damage or loss.

The Tenant stated that on April 02, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were personally served to the Landlord. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Landlord submitted documents to the Residential Tenancy Branch on May 12, 2014. The Tenant acknowledged receiving the Landlord's evidence on May 14, 2014 and it was accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Preliminary Matter

The Landlord and the Tenant agree that the Tenant was previously served with a One Month Notice to End Tenancy for Cause, dated February 28, 2014. The parties agree that the reasons for ending the tenancy cited on this Notice to End Tenancy were 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 that the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant.

The Landlord and the Tenant agree that this Notice to End Tenancy was the subject of a dispute resolution proceeding on March 20, 2014. The parties agree that the Notice to End Tenancy was set aside at the conclusion of the hearing on March 20, 2014.

I find that circumstances leading to the service of the Notice to End Tenancy dated February 28, 2014 have already been considered by a previous arbitrator and cannot, therefore, be reconsidered at this hearing. The principle of res judicata applies. In my view, anything that occurred prior to the hearing on March 20, 2014 has already been considered when determining whether this tenancy should end and those circumstances should not, therefore, be considered when determining the merits of the Notice to End Tenancy that is the subject of this tenancy.

#### Issue(s) to be Decided

Should the Notice to End Tenancy for Cause dated March 30, 2014, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside and is the Tenant entitled to compensation as a result of being served with a second Notice to End Tenancy?

#### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 01, 2013; that rent of \$720.00 is due by the first day of each month; and that a male is occupying the rental unit with the consent of the Tenant.

The Landlord and the Tenant agree that a One Month Notice to End Tenancy for Cause was personally served to the Tenant on March 30, 2014, which declared that she must vacate the rental unit by April 30, 2014. The parties agree that the reason for ending the tenancy cited on this Notice to End Tenancy is 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.

The Landlord stated that whenever the male occupant passes her in the hallway he laughs in an evil manner and/or makes rude comments and that the encounters have occurred frequently since February 28, 2014. In a written submission she declared that on two occasions on March 27, 2014 she observed the occupant parked in front of the door to the residential complex, which is a signed "no stopping" area.

In a written submission the Agent for the Landlord with the initials "S.H" declared that when he spoke with the male occupant he called him a "goof" and that on other occasions he has called him other inappropriate names. He stated that he most recently called him an inappropriate name on May 19, 2014.

The tenant in unit 310 stated that the male occupant of the rental unit frequently attempts to intimidate her and her husband by staring in an "aggressive manner" and by making inappropriate comments. She stated that she cannot sit on her patio without being abused by the male occupant and she cannot take her grandchild to play outside as she is concerned that the male occupant will use profanity in front of the child. She stated that she has overheard the male occupant use abusive language towards other occupants and the managers. She stated that she believes the Tenant has only been present on one occasion when the male occupant made inappropriate comments to her.

The tenant in unit 310 has written several letters outlining recent conflicts with the male occupant of the rental unit, which have been submitted in evidence, which declare:

- On April 21, 2014 the male occupant called her a “f\_\_\_ing b\_\_\_ch, after passing her in the hallway.
- On March 16, 2014 the male occupant passed her and her husband in the parking lot, at which time he said: “you hear that revving, you f---ing moron, you fat f\_\_\_ing b\_\_\_ch”.
- On April 13, 2014 the Tenant “buzzed” her at 12:40 a.m. to tell her the front door to the complex was not closing properly.
- Sometime in early April of 2014 she was in the parking lot when she overheard the male occupant refer to her as “that fat f\_\_\_ing b\_\_\_ch.
- Some near the end of March of 2014 the male occupant passed her in the parking lot and told her he was about to “rev” his engine and he again called her a fat f\_\_\_ing b\_\_\_ch”.

The tenant in unit 310 stated that she is aware of the three incidents her husband described in the three letters of complaint that he wrote, which have been submitted in evidence. She stated that all of these incidents occurred in April of 2014. In these letters her husband declared:

- He was waiting in the parking lot when the male occupant called him a “f\_\_\_ing moron” and he called his wife “names”
- He was entering the building when he overheard the male occupant tell a third party to tell the Landlord to “f\_\_\_k herself”.
- The Tenants dog tried to attack his dog while they were passing in the hallway.

The Landlord submitted a letter from a police officer, dated April 11, 2014. In the letter the officer declared that he was present when the Landlord served the Tenant with an “eviction notice” on February 28, 2014. In this letter the officer declared that the female Tenant “immediately became loud and argumentative” and that when the male occupant came to the door he was also “loud and argumentative”.

The Landlord submitted an undated letter from an occupant of the rental unit, in which the occupant declared that the Tenant has approached her several times to ask if she will be a witness in “her arbitration”. She stated that she has come to her door “a few times” and she does not answer the door and she believed the Tenant was coming to “harass her”.

The Landlord submitted an undated letter from a second occupant of the rental unit, in which the occupant declared that the Tenant has approached the author and his/her roommate to ask if the tenant will be a witness in their “arbitration”. The author stated that the Tenant has been told that the Tenant has been told they do not wish to be involved but she continues to come to her door.

The Landlord submitted an undated letter from an occupant of the rental unit, in which the occupant declared that he has brought this concern to the attention of the managers at the "beginning of March". He stated that he has been woken up at various times of the night by the male occupant, who revs his engine and speeds in the parking lot at various late hours of the night. The letter informs the Landlord that he is losing sleep and he intends to move if the situation does not improve.

The Landlord submitted a letter, dated March 30, 2014, in which the occupant of unit 306 stated that on March 30, 2104 the occupant of the rental unit he used a profanity while referring to the female occupant of unit #310. The Landlord submitted an undated letter from this same occupant, in which the occupant outlined a variety of incidents that occurred prior to February 28, 2014.

The Landlord submitted a letter, dated March 03, 2014, from an occupant of the rental unit. The author declared that "recently" she has been disturbed by "someone" who drives in and out of the parking lot at "all hours".

The Tenant stated that she has never heard the male occupant speak in a derogatory manner to any occupant of the residential complex or to anyone representing the Landlord. She contends that some of the letters of complaint refer to issues that occurred prior to February 28, 2014 and that some of the letters were introduced into evidence at the first hearing.

The occupant of the rental unit stated that he never speaks with anyone in the residential complex, with the exception of the Tenant, the occupant of unit 201, and his girlfriend, who also lives in the complex. He stated that he has read the documentary evidence regarding his behaviour that was submitted by the Landlord regarding and it is all false, including the information provided by the police officer. He stated that he never said anything inappropriate to the police officer, except that the notice to end tenancy has "nothing to do with him". He stated that he has never spoken with any of the authors of the letters; that he has never raised his voice to anyone unless they raised their voice first; and that he yells and uses foul language only when speaking with the Tenant. He specifically denies calling the Agent for the Landlord with the initials "S.H." an inappropriate name on May 19, 2014.

The Tenant in unit 206 stated that she the occupant is her boyfriend and that she has never seen him intimidate or use abusive language toward an occupant of the residential complex or toward a representative of the Landlord.

The Tenant in unit 106 stated that she has never been intimidated by the male occupant and that she has never seen him intimidate or use abusive language toward an occupant of the residential complex or toward a representative of the Landlord. She stated that she has heard him yelling inside his apartment and she has heard him use profanity, but she has never witnessed that anger or profanity being addressed at anyone other than the Tenant.

The Tenant stated that she does not harass other people or representatives for the Landlord. She stated that she feels that service of the Notice to End Tenancy, dated March 30, 2014, is an attempt to harass her, for which she is seeking compensation of \$100.00.

### Analysis

I favour the testimony of the Landlord and the Agent for the Landlord, who stated that the male occupant has spoken to them in a derogatory manner since the hearing on March 20, 2014 over the testimony of the male occupant, who categorically denied all of the allegations. In reaching this conclusion I was influenced, in part, by the testimony of the tenant in unit 310, who stated that she has overheard the male occupant use abusive language when speaking to the managers. I find that this testimony corroborates the evidence of the Landlord and the Agent for the Landlord.

I favour the evidence of the female tenant in unit 310, who declared that the male occupant has referred to her in a derogatory manner on at least 2 occasions in April of 2014 and on at least one occasion during the latter part of March of 2014 over the testimony of the male occupant, who categorically denied all of the allegations. In reaching this conclusion I was influenced, in part, by the documentary evidence of this tenant's husband, who declared he overheard the male occupant call his wife "names". In reaching this conclusion I was also influenced by the written declaration of the occupant of unit 306, who declared that she has heard the male occupant refer to tenant in unit 310 in an inappropriate manner. I find that this evidence corroborates the evidence of the female tenant in unit 310.

I favour the evidence of the male tenant in unit 310, who declared that the male occupant has referred to him in a derogatory manner on at least 1 occasion over the testimony of the male occupant, who categorically denied all of the allegations. In reaching this conclusion I was influenced, in part, by the testimony of this tenant's wife, who declared she overheard the comment being made sometime in April of 2014. I find that this evidence corroborates the evidence of the male tenant in unit 310.

I find that the testimony of the male occupant is self serving and lacking in credibility. I find that his blanket declaration that he has never spoken with anyone in the complex, with the exception of his girlfriend, the Tenant, and one other occupant, is difficult to believe. If it were true that the occupant did not interact with anyone in the residential complex, with the exception of a few named parties, I can find no reason to conclude why anyone working or residing in the residential complex would have a reason to fabricate the allegations that are being made.

On the basis of the testimony of the male occupant, who acknowledges yelling and using profanity towards the Tenant, and the testimony of the occupant of unit 106, who stated that she has heard the occupant yelling and using profanity, I find it that the occupant does, on occasion, yell and use profanity. I find that this lends credibility to

the claims being made by the Landlord and other occupants of the rental unit in regards to inappropriate use of language.

In determining this matter I was heavily influenced by the written declaration of the police officer, who stated that when the male occupant came to the door on February 28, 2013 he was "loud and argumentative". I find that this declaration from this unbiased party is compelling. I find that this declaration directly contradicts the male occupant's testimony that he said nothing inappropriate to the police officer and it serves to corroborate the evidence of the several witnesses for the Landlord, who describe the occupant's behavior as intimidating and verbally abusive.

In determining this matter I have placed little weight on the testimony of the tenants of unit 106 and 206, who both stated they have not observed the male occupant attempt to intimidate or use abusive language toward an occupant of the residential complex or toward a representative of the Landlord. Even if I were to accept this testimony to be true, it does not show that the occupant has not behaved inappropriately to others when these witnesses were not present.

In determining this matter I have placed little weight on the testimony of the Tenant, who stated she has not heard the male occupant use derogatory language when speaking with an occupant of the residential complex or a representative of the Landlord. Even if I were to accept this testimony to be true, it does not show that the occupant has not behaved inappropriately to others when the Tenant was not present.

Section 47(1)(d)(i) of the *Act* authorizes a landlord to end a tenancy when the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. On the basis of the undisputed evidence, I find that the Landlord served the Tenant with a One Month Notice to End Tenancy on March 30, 2014, in which the Landlord informed the Tenant that it intends to end the tenancy on the basis of section 47(1)(d)(i) of the *Act*.

When I consider the evidence presented by the Landlord in its entirety, I find that the antagonistic behavior of the male occupant demonstrated after March 20, 2014 has unreasonably disturbed the Landlord, the Agent for the Landlord, and the occupants of unit 310. I therefore find that the Landlord has grounds to end this tenancy pursuant to section 47(1)(d)(i) of the *Act*.

While I have not determined that the Landlord has grounds to end this tenancy on the basis of incidents that have occurred prior to March 20, 2014, I am cognizant of the fact that previous concerns have been raised to the Tenant and the occupant, and that his inappropriate behaviour persists.

In determining this matter I have placed little weight on the allegations that the Tenant has been asking other occupants of the residential complex to assist her with this dispute resolution proceeding. I find that the Tenant has a right to seek support for a

dispute resolution proceeding and to continue to seek support until she is clearly informed that her requests for support are unwanted and must not continue.

In determining this matter I have placed little weight on the undated letter from an occupant of the rental unit, in which the occupant declared that he has brought this concern to the attention of the managers at the “beginning of March”. He stated that he has been woken up at various times of the night by the male occupant, who revs his engine and speeds in the parking lot at various. As this concern should have been raised at the hearing on March 20, 2014, I find it inappropriate for me to consider it at these proceedings.

As the Landlord has established grounds to end this tenancy in accordance with section 47(1)(d)(i) of the *Act*, I find that the Landlord had the right to serve the Tenant with another Notice to End Tenancy on March 30, 2014. I therefore find that the Tenant is not entitled to compensation for harassment, as a result of this Notice being served.

### Conclusion

As the Landlord has demonstrated grounds to end this tenancy in accordance with section 47(1)(d)(i) of the *Act*, I dismiss the Tenant’s claims to set aside the One Month Notice to End Tenancy that was served. The Tenant is obligated to vacate the rental unit on the basis of the Notice to End Tenancy, dated March 30, 2104. An Order of Possession has not been granted, as the Landlord did not request one at the hearing.

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: May 21, 2014

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Residential Tenancy Branch

