



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BELMONT PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated May 27, 2014. The Notice alleges that the tenant or a person she has permitted on the property has unreasonably disturbed or significantly interfered with another occupant or the landlord. Such conduct, if established, warrants eviction under s. 47(1) of the *Residential Tenancy Act* (the “Act”).

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show, on a balance of probabilities that such conduct has occurred?

### Background and Evidence

The rental unit is a two bedroom apartment in a 47 unit apartment building, one of three such buildings in the landlord’s apartment “complex.”

The tenancy started in July 2013. The monthly rent is \$960.00. The landlord holds a \$470.00 security deposit.

Ms. L.D. for the landlord testified that in February she had given the tenant two separate written warnings about marijuana stink and about received noise complaints from other occupants. She says that on May 15<sup>th</sup> she received a complaint from another tenant and went to the dispute address to find the tenant and her three year old son screaming. She told the tenant she was going to receive a notice and, thirteen days later, the Notice in question was issued.

During the hearing the landlord's representatives proposed to enter signed statements to show that persons in other buildings in the apartment complex had complained about the tenant. It was my view at hearing that any disturbance or interference must occur to occupants of the tenant's building and not to occupants of other buildings. The statements were admitted however, as they might bear on the question of credibility.

I now note that the new *Residential Tenancy Act* definition of residential property specifically includes other buildings in a complex. I have therefore reviewed the statements in question as they bear on whether or not the tenant has breached s. 47(1).

The landlord relies on the written, signed statements of Ms. L.G. who lives across the hall and Mr. F.W., another nearby tenant. Attempts were made to reach Ms. L.G. by telephone but without success. Her statement dated May 20, 2014 refers to

[o]ur personal complaint, police Records [sic], fights, Constant [sic] phone Calls [sic] of Complaints [sic] to [landlord name deleted], continuous rebellious actions + strange people coming + going all hours of day + Night [sic] causing damage in hallways, drunk + yelling, Running [sic], slamming doors, foul Language [sic], + the child being left running in the hallway by himself crying for his mother.

Mr. F.W.'s statement dated May 24, 2014 says that "[t]he person that lives in #102 [full address deleted] has been picking on me. She also slams her door at early in the morning. [sic] She also screams at her child early in the morning."

The tenant denies every allegation. She says that she complained about receiving the two warnings as unjustified. She says that any complaint about the smell of marijuana in the hallways is because of the landlord's witness Mr. F.W., who has a medical marijuana permit, smokes it in his apartment. She claims he has assaulted her. She says she usually up early for school and a friend provides childcare. She says her son is never running in the hallway. Indeed, the Ministry of Child and Family Services conducted an investigation into her parenting and determined that her son did not need its protection.

The tenant referred to a variety of signed, written statements to support her position that she has not breached s. 47(1). Mr. J.M., her next door neighbour in the building testified that she is a good mother and not a problem tenant. He says any noise has been "misinterpreted." He says that Mr. F.M is the noisy one; a constant drinker, yeller and pot smoker.

A number of the tenant's witnesses did not respond at the telephone numbers given and so were not heard.

### Analysis

The eviction of a tenant is a very serious matter. While the burden of proof on a landlord to establish a breach of s. 47(1) is still a "balance of probabilities" and while arbitrators under the *Act* are not held to the strict rules of evidence imposed by a court, a landlord seeking to evict a tenant must present convincing evidence. When that evidence takes the form of written statements and when the contents of those statements are challenged by oral testimony under oath by witnesses subject to questioning, there is little basis upon which to test the credibility of the person giving written evidence. That person cannot be questioned; cannot fill in details about his or her testimony. That is the case here. There is no reasonable basis for me to prefer the written statements over the oral evidence of the tenant and Mr. J.M.

In this case, the statement of Ms. L.G. speaks only in generalities. It identifies no particular incident on any particular date. From it, one may speculate she was unreasonably disturbed but that essential point is not clear. The statement of Mr. F.W. is even weaker. It is his opinion that the tenant is picking on him but he offers no fact or facts to support such an allegation. He states that she slams her door and screams at her child. Apparently these events only happen early in the morning. How he knows who it is, whether it has happened more than once or twice, or how it has "unreasonably" disturbed him over and above being the noise if living in an apartment, are vital questions that remain unanswered.

Ms. L.G. an occupant in one of the neighbouring buildings signed a statement that a suite "directly across" from her in the tenant's building is the source of disruption from people partying in the suite, using profane language and travelling back and forth from the balcony to the parking lot. If it may be assumed that she is referring to the tenant's suite, the statement lacks any specificity. Indeed, Ms. L.G. may be referring to events happening after the Notice was served on the tenant. I give it little weight.

The two occupants in a third floor suite in a neighbouring building provided a written statement raising very concerning allegations. They identify this tenant's suite number and say that the noise and behaviour from the suite are becoming intolerable. They allege that they can hear every conversation that the tenant has, that she is foul-mouthed and that she "torments" her child. Once again, the general, dateless, detail-less statements in the document contrast sharply with the evidence submitted by the

tenant and I consider that I have no reasonable basis upon which to prefer this written statement over that competing evidence.

A Mr. or Ms. M.M. provided a statement referring to undated events from “tenants” in a building “at the bottom corner” and particularly, loud swearing from a woman who has “kids.” Without more detail from this witness, this statement has little if any weight.

### Conclusion

In the face of this competing evidence I find that the landlord has not established that the tenant is in breach of s.47(1) of the *Act* and I hereby cancel the Notice to End Tenancy.

I wish to make it clear that had the conduct alleged of the tenant been proven at this hearing, it may well have been sufficient to justify eviction. I caution this tenant that if in fact there is some basis for the allegations of disturbance, she should adjust her conduct immediately.

The tenant is entitled to recover the \$50.00 filing fee for this application. I authorize her to reduce her next rent due by \$50.00 in full satisfaction of the fee.

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: July 11, 2014

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Residential Tenancy Branch

