



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MT, FF

### Introduction

The tenant applies to cancel a one month Notice to End Tenancy for cause. He also seeks more time to make the application but it appears that he has applied within the ten day period permitted.

The Notice was given alleging the tenant 1) has significantly interfered with or unreasonably disturbed another occupant, 2) seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and/or 3) breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord's evidence relates to the first ground only; that the tenant's conduct has been unreasonably disturbing another occupant.

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show, on a balance of probabilities, that the tenant has committed the conduct warranting his eviction?

### Background and Evidence

The rental unit is a bachelor suite in a seniors townhouse complex. The tenancy started in January 2006. The rent, calculated as a portion of tenant income, is \$361.00 per month, due to be increased effective August 2014.

The landlord's representative, an on-site manager, reports that in April 2013 another tenant, a Ms. V.M. age 89 years, reported receiving an inappropriate letter from the tenant regard what he thought might be her interest in watching his "erotic cross-dressing displays" from her apartment across the way and asking her to let him know whether she wished to continue to watch or not.

The tenant is now 69 years old he describes himself as a gender dysphoric person, having an inborn desire to appear and behave as a woman.

The landlord's representatives suggested that Ms. V.M. do nothing in hope the activity would stop. There was second letter shortly after, which included material associated with cross-dressing and trans-sexuality, including pictures from magazines related to that portion of the community. The police were called and spoke to the tenant.

In May of this year Ms. V.M. reported that "it was starting again." Apparently the tenant had briefly put a sign in his window picturing a penis and data regarding his recent sexual activity. Two other tenants said they'd seen the sign.

### Analysis

I find that this matter is not a instance of discrimination against the tenant based on his sexual orientation, rather it is a question of the tenant's intrusion into the lives of others and whether that intrusion is causing a "significant interference" with other occupants or is "unreasonably disturbing" another occupant.

It must be noted that the provisions of s. 47 of the *Residential Tenancy Act* (the "Act") declaring that such conduct warrants eviction, require that there be an actual "significant interference" or an actual "unreasonable disturbance." The mere fact that there exists conduct which one might reasonably expect to significantly interfere with or unreasonably dispute another, is not sufficient.

In that regard it is virtually essential for an arbitrator making that determination to hear evidence from the occupant(s) claiming to have been interfered with or disturbed. Without that evidence an arbitrator is only able to speculate about the effect of a tenant's conduct. Speculation is not enough to warrant the eviction of a tenant.

That is the case here. I am left to speculate about the effect of the conduct on Ms. V.M. or of the brief view of the tenant's sign by the other two occupants.

Conclusion

The tenant's application is allowed. The one month Notice to End Tenancy dated May 30, 2014 is hereby set aside. The tenant is entitled to recover the \$50.00 filing fee paid for this application. I authorize him to reduce his next rent due by \$50.00 in full satisfaction of the fee.

This decision was rendered orally after hearing and 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 31, 2014

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Residential Tenancy Branch

