



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MT, CNC, MNDC, ERP, LRE

### Introduction

This hearing dealt with an application by the tenant:

- to cancel a notice to end tenancy
- for more time to make application to cancel such a notice
- for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement
- for an order that the landlord make emergency repairs
- for an order to suspend or set conditions on the landlord's right to enter the rental unit

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence. The tenant was assisted by an advocate.

There was insufficient hearing time to hear evidence related to the tenant's claims regarding a monetary order, emergency repairs, and the landlord's right to enter the rental unit. Accordingly, those claims are dismissed with leave to reapply pursuant to Rule of Procedure 2.3.

### Issue(s) to be Decided

- Was the tenant's application to cancel the notice to end tenancy filed within the prescribed time limits?
- If not, is the tenant entitled to more time to make her application?
- If the tenant's application is in order, should the notice to end tenancy be cancelled?

### Background and Evidence

The landlord gave evidence that the landlord bought the building effective April 1, 2007 and the tenant was already living in the rental unit. The tenant gave evidence that she has lived in the housing complex for about 30 years, in various rental units within the complex.

The landlord gave evidence the tenant was served with a Notice to End Tenancy for Cause (the "Notice") by posting the Notice on the tenant's door on June 27, 2014. Section 90 provides that a document served in this manner is deemed to be received three days later.

The Notice specifies an effective date, or move-out date, of July 31, 2014 and provides the following reasons for 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 or a person permitted on the property by the tenant has put the landlord's property at significant risk

The landlord provided the following evidence in support of the Notice.

Tenant SD (who lived across the hall from the tenant in this application) sent the landlord an email April 23, 2014 stating: "She [the tenant] has been harassing my Girlfriend for around a month now, telling other tenants that she is a whore, that she apparently steals her dog food and even confronting her in a very threatening manner." SD also suspected the tenant wrote obscene words on his car windows, and said the tenant calls his girlfriend obscene names.

SD sent the landlord another email dated June 26, 2014 which reads:

"I can't stand living across from [tenant] anymore and I'm moving out. This is my official notice for July. I can't handle her constantly watching me in the halls and giving her stupid remarks and her harassing my girlfriend. My friends come over to go for a bike ride and she comes into the hall and even harasses them. I have had enough and maybe in the future if the building finally kicks her out I may come back but, I cannot take it anymore. I'm sad to leave since its been my home for 3 years now yet enough is enough."

Tenant TK (who lives down the hall from the tenant in this application) sent the landlord an email on May 5, 2014 which reads, in part:

“[Tenant] has been constantly bothering me with her complaints of this building and everyone in it, talking about how she has cameras hidden in her smoke alarm, microwave and t.v. She is constantly coming to me telling me that there is people breaking into her apartment taking her clothes, underwear etc, It is starting to scare my two children, they think people are going to try and break into our house at night, she says people come through her closets and she can hear people in the walls .. and I’m SICK and TIRED of them being frightened by her crazy insane stories and harassing me every time she sees me in the hallway its taking up my time as well as my patience and my kids do not need to hear her crazy assumptions and stories which make no sense at all, it has given them nightmares. She obviously has a mental condition that should be observed by a professional.”

TK also wrote the landlord a handwritten letter on June 26, 2014 in which she complains of similar behaviour by the tenant. She also says the tenant constantly knocks on her door and she has to pretend she is not home to avoid a conversation. She says she is very quiet in the hallway to avoid the tenant hearing her and engaging her in conversation. She says the tenant becomes angry if she tells her she can’t talk. She states she is worried about the safety of her children and herself.

Tenant DK wrote a statement dated June 26, 2014 which says, in part:

“... for the last two years in particular I started to feel uncomfortable living at [rental building]. I feel that I need to sneak around the building to avoid [tenant]  
...

I have witnessed [tenant] numerous times verbally abusing different tenants. Threatening and accusing them of anything she can think of without any evidence. Such as: stealing her belongings from her apartment or accusing other female residence of seducing her boyfriend. I would like to additionally state that I’ve spoken to previous tenants as they are moving out and they have communicated that the reason why they have decided to leave is because of the constant hassle with [tenant].

I do not feel comfortable or safe in the apartment building I currently reside in, due to [tenant’s] presence. I would additionally like to verbalize my concerns for

[building manager's] safety .. due to the continued threats our Building is under. I need this matter taken care of as I do not deserve to live in constant fear in my own home."

Tenant RT also provided a statement dated June 26, 2014 which reads, in part:

"On June 17, 2014 .. I was walking my dog outside [rental building]. I heard [tenant] yelling and pointing at ["G" building maintenance man] from across the Parking Lot approx. 10 Feet away, saying: "Oh that's the f\*\*king bastard who keeps entering my apartment and ripping me off." I immediately walked towards [G] and asked what's going on? And [G] said "she's accusing me of trespassing and stealing" and just left.

Right after [G] left [tenant] continued on with her accusations about [G] saying "I'm sick and tired of people coming into my place with their Master keys", "They all steal! They all do it!", "They rip off my CD's, underwear, bras, make up and medications"

"I have resided in [rental building] in the last 14 years, and for the last 8 years I've witnessed [tenant] harassed everyone. From all the different tenants to different [landlord] Staff members. Numerous times I have witnessed [tenant] harassed tenants and verbally threatening them and accusing them of fabricated lies. It has come to a point where I feel the need to communicate that I have spoken to different tenants who has left and moved away because of [tenant's] constant aggressive and threatening ways. Additionally, her verbal abuse has gotten to a point where I am constantly tip toeing around the apartment building in fear of me running into [tenant] and might start verbally abusing me. Also, please note that [tenant] has constantly left Voicemail messages on my phone accusing me of breaking into her apartment and stealing her belongings as well. I need this matter resolved as I do not deserve to live in an abusive environment."

The landlord provided a copy of a breach notice written by resident manager AT and dated June 18, 2014 that was issued to the tenant. The notice reads, in part:

"We have received numerous formal written complaints from your neighbours regarding constant verbal abuse and threatened assaults. In addition, different [landlord] staff members has formally reported your threatening verbal assaults while using profanities and spreading fictional and degrading stories about some of the [landlord] staff members, including your landlord. Please be advised that we have zero tolerance regarding threats to the health, safety or welfare of our team and residents in the property."

Resident manager AT submitted a written statement dated June 26, 2014. She states that since January 2014 she has received numerous verbal complaints about the tenant, and "Most of the complaints is surrounding their discomfort and feeling unsafe due to [tenant's] constant Aggressive, Accusative and Threatening tone/manner." AT's statement indicates that after she gave the tenant the June 18<sup>th</sup> breach notice:

".. she decided to call my phone and in the most combative tone demanded me to tell her who the neighbors are who complained about her. I tried explaining to her on the phone the due to safety issues and privacy law I could not release the information to her .."

"In the evening around 5:00 pm [tenant] called me again, in the same combative and threatening tone. She proceeded to advise me of her plans to calling [landlord] head office and my Manager to complain a lodge about me. So I gave her the phone numbers that she requested for. She then proceeded to say: "You better watch it! You better watch it!" After hearing her say "You better watch it! You better watch it!" I proceeded to ask her to clarify her statement. If she understands the severity of her saying "You better watch it! You better watch it!" to me is considered a Threat and that she is in violation of the addendum for Crime Free Housing Program Agreement that she signed [tenant] in her most egotistical state, uttered "F\*\*king Asian" before hanging up the telephone."

AT also says "I fear for my Safety and feel extremely uncomfortable, stressed and anxious at work due to her constant aggression and verbal abuse."

Building maintenance man GM also provided a statement dated June 26, 2014, in which he describes two incidents involving the tenant:

June 17, 2014 – At GM's first encounter with the tenant, "she immediately said; "I want to lodge a complaint about the tweet noise above my head in the ceiling. There are also people banging on my windows and walls 24/7." Before I was able to respond, in an instance, she proceeded to accuse me of doing it! Her tone and language started civil and escalated to extreme vulgarity. She started cursing and swearing at me. Out of nowhere, she then said "F\*\*k you!" You're a God Damn Thief!" ..

June 21, 2014 – As GM was working in the hallway outside the rental suite, "Out of NO where she opens her door from the inside and started accusing me of

stealing from her apartment. She yelled very loudly; "Get away from my door, Thief!" loud enough for all the neighbors to hear.

Another building maintenance man ED provided a statement dated June 30, 2014. He reports a May 19, 2014 incident in which the tenant referred to the resident manager as a "cow". ED says "When I disagreed with her statement, she then replied "Why are you taking her side? Are you f\*\*king her?" ED also reports that the tenant gave the finger to a neighbour who witnessed this exchange.

The landlord provided a copy of a letter dated July 17, 2014 from tenant NSP. NSP reports that on July 17, 2014, the tenant called her, accused her of causing a water leak that had led to water damage in the tenant's apartment, and demanded that NSP pick up boxes for her. NSP states "... due to the aggressive nature of our conversation this morning I have become quite nervous and stressed for my own safety. Her accusations and aggression has led me to believe that she is capable of perhaps even damaging my property, including my partner's work truck that is parked outside the building, right beside where she parks."

The previous resident manager SL also gave evidence. He said that the tenant in the past called him with accusations. She complained of hearing jack-hammering in the suite next door, which was empty at the time. She also reported that all her belongings had been stolen.

The tenant agrees she referred to the resident manager as a "cow". She says the resident manager speaks to her in a patronizing tone and does nothing to help her. She denies that she has harassed or threatened other tenants. The tenant's evidence is that other tenants and the landlord are threatening and harassing her.

The tenant gave evidence that the landlord did not believe that people were stealing from her. She says she put her own deadbolt on the rental unit door. Her evidence is that the landlord replaced her deadbolt with one that everyone in the building can access.

The landlord also gave evidence that the tenant has put the landlord's property at significant risk based on the quantity of possessions she has in her rental unit. The landlord provided photos showing a bedroom filled with belongings. The landlord's evidence is that the only place where there is room to stand is where the door opens. The landlord asserts there is a fire hazard because a light bulb is close to some of the items.

The tenant agrees she has a lot of belongings in her rental unit, but says things are just in disarray; there is no garbage or rot. She says the light bulb in the landlord's photos is a lamp she placed in the bedroom to allow a maintenance man to repair the wall. The tenant's evidence is that she has lived in the housing complex for about 30 years and has significant health problems.

The tenant's advocate notes that the tenant has lived in the complex for about 30 years and these complaints are quite recent.

The tenant's advocate notes that most of the typed statements from other tenants and staff are dated June 26, 2014, and questions whether the other tenants wrote them personally or whether the resident manager wrote them. She notes the tenant has known most of the people who gave statements for years; she says the letters and statements appear "coached".

The resident manager gave evidence that she interviewed various tenants and staff on June 26, 2014; she recorded their concerns on her office computer and prepared statements for them to sign.

### Analysis

I find the tenant received the Notice on June 30, 2014. The tenant's Application for Dispute Resolution is date-stamped by the RTB Burnaby office "July 2, 2014" and includes an application to cancel the Notice. I find the tenant's Application for Dispute Resolution was filed within the 10 day time limit set out in Section 47(4). The tenant therefore does not need to apply for more time.

When a landlord issues a notice to end tenancy for cause and the notice is disputed by the tenant, the onus is on the landlord to prove one or more of the specified causes on a balance of probabilities. Here, the landlord has specified three causes for ending the tenancy. If the landlord proves at least one of those causes, the Notice will not be cancelled. However, if the landlord does not prove any of the specified causes, then I must cancel the Notice.

The tenants who gave written statements were not called as witnesses in the hearing, so I was not able to clarify their statements.

Tenant SD evidence – It is not clear what SD means by "harassing" or "confronting her in a threatening manner". The specific allegations are that the tenant has called his girlfriend obscene names to her face and also to others, and the tenant has accused her

of stealing dog food. He also suspects the tenant is the person who wrote obscene names on his car windows. He said the behaviour started about a month before his April 23, 2014 email.

I have concerns about SD's credibility as a witness, based on the date of his purported move-out notice. The move-out notice is dated June 26, 2014, the same date the resident manager was gathering statements from other tenants concerning the tenant in this application. I think it is likely that SD was moving out anyway, and took the opportunity to attribute his move to the tenant.

Tenant TK evidence – TK appears to have been primarily troubled by the tenant frequently speaking to her and telling her “crazy insane stories” in front of TK's children. She also uses the word “harassment” but it is not clear whether she means anything more than frequently speaking to her and telling her “crazy insane stories”.

Tenant DW evidence – DW makes broad statements but does not provide specific evidence. She speaks of “threats” but there is not a single example of a time the tenant has threatened someone. She speaks of “verbal abuse” but it is not clear what DW means by that. She says she has heard the tenant accusing other tenants of stealing the tenant's belongings and seducing the tenant's boyfriend, but does not provide any specific dates and times that she heard the tenant making such accusations. It is not apparent from this letter why DW would be living in “constant fear”.

Tenant RT evidence – I do not know what RT means by “verbal abuse” or “harassment” since she did not provide specific information. However, I accept her account of the June 17, 2014 incident involving G. I also accept her evidence that the tenant has, on more than one occasion, accused RT of breaking into the tenant's apartment and stealing things.

The June 18<sup>th</sup> breach notice advises the tenant there have been “numerous formal written complaints from your neighbors regarding constant verbal abuse and threatened assaults.” However, the evidence provided that is dated before June 18<sup>th</sup> does not contain *any* complaints regarding threatened assaults. That evidence does refer to “verbal abuse”, however the nature of the verbal abuse is not specified except in SD's letter where he states the tenant called his girlfriend obscene names.

Resident manager AT evidence – AT suggests that the tenant's statement “You better watch it!” was a threat of some kind. Since the tenant is said to have made the statement immediately after asking for the telephone number of the resident manager's superior, it seems most likely that what the tenant intended to do was complain to the



resident manager's superior. Given the context of the tenant's statement and the fact there is no evidence of the tenant making any threat of physical violence at any earlier time in her lengthy tenancy, I find it is very unlikely the tenant's statement was a threat of physical violence. I do accept the resident manager's evidence that the tenant used a combative tone and called the resident manager a "F\*\*king Asian".

Tenant NSP evidence – I have concerns about NSP's credibility as a witness. I found her statement "Her accusations and aggression has led me to believe that she is capable of perhaps even damaging my property, including my partner's work truck that is parked outside the building, right beside where she parks" to be bizarre, in that there was nothing reported about the tenant's behaviour that could rationally lead NSP to have such concerns.

I share the advocate's concern about the landlord's evidence. Almost all of the letters and statements from other tenants and from staff appear to have been drafted by the resident manager. The letters and statements mostly contain sweeping statements, with few specific examples of the alleged behaviours. The written evidence also includes a great deal of hearsay; allegations the writers claim they heard from others.

The letters and statement contain similar broad statements regarding the tenant's behaviour. They allege harassment and aggressive or threatening behaviour, but do not provide the details necessary to substantiate those allegations. Also, almost every letter or statement raises a "safety" concern. I am troubled by the fact that these concerns are almost identical, and yet I can find no rational basis for anyone being concerned about their physical safety. This series of identical yet apparently baseless allegations causes me to be hesitant to rely on the landlord's evidence.

The specific incidents of the tenant's behaviour that I am able to identify from the written statements are:

- Tenant told the previous resident manager that she could hear jack-hammering from an apartment the manager knew to be empty
- Tenant has complained at various times to other tenants TK, DK, and RT and the previous resident manager that people are stealing from her or coming into her rental unit
- Tenant has accused RT of stealing from her
- On May 19, 2014, tenant spoke to maintenance man ED, calling the resident manager a "cow" and inappropriately suggesting ED and the resident manager had a sexual relationship

- On June 17, 2014, tenant swore at maintenance man GM and accused him of stealing from her
- On June 18, 2014, tenant told the resident manager she had better watch it, and called her a “f\*\*king Asian”.
- On July 17, 2014, tenant had a telephone call with NSP in which she accused NSP of causing the water leak and asking or “demanding” that NSP get her some boxes

Even if I accept that all of these incidents happened as described (and I am somewhat hesitant given my above-noted concerns with the landlord’s evidence), at issue is whether they constitute “significant interference” or “unreasonable disturbance” within the meaning of the Act.

I note the tenant has lived in the housing complex for as long as 30 years (on her evidence) and at least since 2003 when she signed an “Addendum for Crime-Free Multi-Housing Program” that was included in the landlord’s evidence. The behaviour described is relatively recent.

I find that the above-noted incidents are not sufficiently egregious to constitute significant interference or unreasonable disturbance, especially given the long-standing tenancy. However, I note that if behaviour such as swearing at staff members or making repeated, unsubstantiated accusations of theft is to continue and be properly documented, it may provide the basis for a successful eviction in future.

I find that the landlord did not provide adequate evidence to establish that the tenant’s quantity of belongings pose a health and safety hazard or put the landlord’s property at significant risk. Since the landlord has not proven any of the three specified causes for ending the tenancy, the Notice is hereby cancelled.

### Conclusion

The Notice is cancelled. The tenant’s other claims are dismissed with leave to reapply.

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: September 10, 2014

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Residential Tenancy Branch

