



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FAIR MANAGEMENT DBA CARRIAGE HOUSE MGNT. & DEBRA  
PORTER  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF, O

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy, to recover the filing fee for this proceeding and for other considerations.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on September 4, 2014. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

### Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?
2. What other considerations are there?

### Background and Evidence

This tenancy started on May 1, 2013 as a fixed term tenancy with an expiry date of April 30, 2014 and then the tenancy continued on a month to month basis. Rent is \$900.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$450.00 on April 8, 2013 and a pet deposit of \$450.00 on May 1, 2013. The Tenant and Landlord both agreed no move in condition inspection report was completed.

The Landlord’s Agent said she served the Tenant with a 1 Month Notice to End Tenancy for Cause dated August 15, 2014 by registered mail on August 15, 2014. The Effective Vacancy Date on the Notice is September 30, 2014.

The Landlord’ Agent said the reason on the 1 Month Notice to End Tenancy is that the Tenant has significantly interfering with or unreasonably disturbing another tenant or the landlord.

The Landlord's Agent said there have been 3 sets of tenants in the upper rental unit from the Tenant's unit and all these tenants have complained about the Tenant and her dogs. The complaints were that the Tenant interfered with the other tenants and has confronted the other tenants with awkward questions like: "Do you drink? Do you fight? How is your marriage? The Tenant said that she did not confront the other tenants with these questions except she did ask one of the tenants if they drank as she thought she may invite them down for a drink some time. The Landlord's Agent continued to say that all the other tenants have made complaints to her about the Tenant's dogs barking and leaving excrement in the house and in the yard. The Landlord Agent provided text messages with some of these complaints on them. It should be note none of the text messages are signed and the Landlord's agent has not provided any witness testimony to support the text messages. The Tenant said she has only had one communication with the other tenants about her dog barking and she apologized to that tenant and she believed that the other tenant was OK with it as she did not hear from that tenant again about her dogs.

The Landlord's Agent continued to say that the other tenants complained to her directly because they did not want to confront the Tenant with their complaints. The Arbitrator asked the Landlord's agent what her process is for complaints about other tenants. The Landlord's agent said she first talks to the tenant that is complained about and if that does not resolve the situation she will write the tenant a letter. The Landlord said she wrote the Tenant a letter dated April 27, 2014 regarding operating a dog business out of the rental unit and about dog feces clean up. The Tenant said she is not operating a dog grooming or boarding business out of the rental unit. The Tenant said she grooms two other dogs approximately once every 3 months and she has had one dog stay with her for a week end during this tenancy. The Tenant's advocate said the Tenant has not received any warning letters about dog barking. The Landlord's Agent agreed that she has not sent a warning letter to the Tenant about dog barking.

The Tenant provided witness C.B. to give testimony about her dog management as the Witness C.B. was her landlord for 2 years previously. Witness C.B. said that the Tenant was a good tenant and she was a thoughtful dog owner. Further Witness C.B. said the dogs were not an issue during their tenancy as the dogs did not cause an issue by barking and the Tenant always cleaned up the dog feces. There were no questions for the witness.

The Tenant provided a second Witness M.P. who is the Tenants aunt and she lives with the Tenant. Witness M.P. said the dogs are not an issue, no tenants have complained to her about the dogs and the Tenant is a good housekeeper. There were no questions for the witness.

The Tenant said in closing that she regrets that this situation has happened but she does not believe that her dogs have created the problem that the Landlord's Agent is saying they have. The Tenant said only one comment has been made by her by one of the previous tenants about her dogs and she believes all the previous tenants moved because of other reasons that are not related to her or her dogs.

The Tenant's Advocate said the Landlord's Agent has not given the Tenant any warning letters about dogs barking so the Tenant was unaware there was a problem and therefore the Tenant could not correct the problem if there was one. The Tenant's Advocate said the Landlord's agent has not proven her claim.

The Landlord's Agent said in closing that she has provided text messages and given personal testimony that the Tenant has significantly interfered with or unreasonable disturbed another tenant and herself.

### Analysis

It is apparent from the testimony and evidence that there are issues between the Tenant and the Landlord's Agent. The Landlord's Agent has testified that the Tenant's dogs have barked and the Tenant has left dog feces in the house and the yard. These situations have negatively impacted other tenants and the landlord's agent; therefore the Landlord's Agent has requested to end the tenancy for cause. The Landlord's Agent has supported these claims by unsigned text messages, her notes and her testimony. The Landlord's agent has not provided any corroborative evidence to support her Notice to End Tenancy. The burden of proving a claim lies with the claimant and when it is just the claimant's word against that of the respondent that burden of proof is not met. I find the Landlord's Agent has not met the burden of proving her claims due to lack of corroborative evidence and therefore has not established grounds to validate the One Month Notice to End Tenancy for Cause dated August 15, 2014.

In Section 47 (d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with.

In this case it is my finding that the reasons given for ending the tenancy have not reached the level of **unreasonableness, significance or seriousness** required by section 47(d) of the Residential Tenancy Act. I find in favour of the Tenant and Order the 1 Month Notice to End Tenancy for Cause date August 15, 2014 to be cancelled

and the tenancy is ordered to continue as set out in the Tenancy Agreement dated April 9, 2013.

As the Tenant has been successful in this matter I order the Tenant to recover the \$50.00 filing fee for this proceeding by deducting it from the December, 2014 rent. The December, 2014 rent is adjusted to \$850.00.

### Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated August 15, 2014 to be cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

The December, 2014 rent payment is adjusted to \$850.00 so that the Tenant can recover the filing fee of \$50.00 for this proceeding from the Landlord.

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: October 22, 2014

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Residential Tenancy Branch

