



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LI CAR MANAGEMENT GROUP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution in which the Tenant sought to cancel a Notice to End Tenancy for Cause issued September 24, 2014 (the "Notice") and to recover the filing fee.

The Tenant appeared on his own behalf. The Landlord was represented by an agent, L.P., who identified herself as the managing broker. The rental building site caretakers, P.H. and W.H., appeared as witnesses, as did another witness B.P.

The hearing process was explained and the participants were asked if they had any questions. The participants provided affirmed testimony and the parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and witnesses, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Residential Tenancy Branch Rules of Procedure Rule 11.1 provides that when a Tenant applies to set aside a Notice to End Tenancy, the respondent Landlord must present their case first.

### Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to recover the amount he paid to file the application?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement dated August 9, 2014 which indicated that the tenancy began on August 8, 2014; rent was payable in the amount of \$1,250.00 per month; and, a security deposit of \$625.00 was paid on August 5, 2014.

The rental unit is in an apartment building with 15 different units. P.H. and W.H. are the site caretakers of this rental building as well as other buildings. They do not reside in the building in which the rental unit is located.

### LANDLORD'S EVIDENCE

B.P. testified on behalf of the Landlord and confirmed that she posted the 1 Month Notice to End Tenancy for Cause (issued September 24, 2014) to the rental unit door on September 24, 2014. The reasons cited in the Notice were as follows:

- 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
  - put the landlord's property at significant risk
- the Tenant has engaged in illegal activity that has, or is likely to:
  - damage the landlord's property; and
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

(the "Notice").

Section 90(c) of the Act provides that documents served in this manner are deemed served three (3) days later; namely September 27, 2014.

Section 47 (f) provides that a tenant may dispute a notice to end tenancy for cause by making an application for dispute resolution within 10 days after the date the tenant

receives the notice. In this case, the Tenant was deemed served on September 27, 2014 and as such had until October 7, 2014 to make his application.

The Tenant made his application for dispute resolution on October 3, 2014; an amended application was filed by the Tenant on October 10, 2014.

P.H. also testified at the hearing and gave evidence regarding the incident which occurred on September 14, 2014. She stated that another occupant of the rental building, T.T., called her and W.H. about the presence of pepper spray in the building. P.H. called the police who advised her not to enter the building and to wait for police attendance.

P.H. and W.H. then went to the rental building and waited outside. A woman, who appeared to have been sprayed by pepper spray, came to the window of the rental unit and was yelling out of the window. According to P.H., the police officers in attendance told the woman to come out of the building and when she resisted they threatened to tasar her. When she came out of the building she was very distraught and was then restrained, handcuffed and taken away by the police.

P.H. testified that she believed that the woman who was taken away by the police was an acquaintance of the Tenant. She stated that the only other time she saw this woman was when the Tenant signed the tenancy agreement.

Also introduced in evidence was an incident report written by W.H. regarding the events on September 14, 2014. W.H. writes that the Tenant was not present in the rental unit at the time of the September 14, 2014 incident; further, when W.H. testified he stated that the Tenant was away working at the time of the September 14, 2014 incident.

In this report, W.H. also notes that the inside glass door of the rental building entry way was damaged at the time of the September 14, 2014. W.H. stated that he believed it was broken on that date as he saw the door intact a day or two before September 14, 2014; consequently, he believed it was somehow related to the incident.

W.H. also testified that he saw the police officers restrain the woman, who he believed was an acquaintance of the Tenant and who had the given name of A. He also testified that the only other time he saw A was when she was present with the Tenant when he signed the residential tenancy agreement.

When asked if he had any knowledge of what happened to the door, W.H. stated he had “no idea”. He also responded that he had “no idea” why A was screaming or who sprayed the pepper spray.

W.H. testified that he went into the rental unit after the September 14, 2014 incident and the police and did not notice any damage to the unit.

W.H. testified that he had not seen A at the apartment building since the incident although he did see her in a store in the City in which they both live.

W.H. confirmed that the Tenant had not been asked to pay for the door, and that in fact the Landlord paid to have it repaired.

W.H. testified that the police have not spoken to him about the incident and that he is unaware of the status of their investigation, if any.

Also introduced in evidence was a “Breach Letter” dated September 15, 2014 wherein the Landlord wrote that the Tenant’s guest’s behaviour on September 14, 2014 was considered a breach of the residential tenancy agreement. In this letter, the Landlord wrote: “Your guest that was staying with you is not welcome [at the rental property]. If she is found to be staying with you, you will be given an eviction notice immediately.”

When questioned by L.P., W.H. testified that two other residents communicated that A was at the apartment with the Tenant. He stated that those occupants refused to provide their names, and were not specific as to dates or locations where they apparently saw A. Further, W.H. could not say when these conversations with the other residents occurred and at first could not specify whether it was September, October or November of 2014 although he did eventually say these conversations occurred sometime in September.

W.H. testified that he performed a follow up inspection on October 26, 2014 at 1:10 p.m. “to look for damage from the September 14, 2014 incident”. He stated that there was no noticeable damage from the September 14, 2014 incident. He did observe what he described as “female shoes” in the entrance way and women’s undergarments in the bathroom.

When asked why he waited six weeks to do a follow up inspection for damage from the September 14, 2014 incident, W.H. conceded that the inspection was not a follow up inspection related to the September 14, 2014 incident, but rather to see if A was living in

the Tenant's rental unit. W.H. confirmed that he did not directly ask the Tenant if A was living there, or whether the items he observed were hers.

L.P. was then asked if she had any questions of W.H. to which she responded that she did not. When asked if she had any further witnesses or testimony, she also responded that she did not. L.P. confirmed that she had closed the Landlord's case.

L.P. confirmed that she did not have a copy of the police report. She stated that she had spoken to the police, but refused to provide me any information as to her discussions.

L.P. also refused to provide the names of the other occupants who had provided information to her regarding the allegations against the Tenant which she says prompted the issuance of the Notice.

I then informed both parties that I had concerns about the insufficiency of evidence; and in particular, that the other occupants had not provided evidence, except in the form of hearsay, that A did not testify and that neither party had obtained the police file.

L.P. then asked to recall P.H. as a witness. She also testified that she does not go to the rental building on a regular basis and as such did not know when the inside door had been damaged, although she confirmed that the first time she was aware it was damaged was on September 14, 2014.

P.H. further testified that she did not know what happened to the door, why pepper spray was present or why A was screaming. P.H. confirmed that the Tenant was not present at the time of the incident. She stated that the other tenant, M.T. stated that he thought it was a drug deal "gone bad". According to P.H., this was the first time anyone had mentioned anything about drugs.

When asked if any other occupants had complained about the September 14, 2014 incident, P.H. testified that on October 23, 2014 she received a call from M.T. who stated that A had returned to the building. P.H. confirmed that aside from M.T., no other residents or occupants of the rental building have communicated that A was at the rental building. P.H. and L.P. both stated that M.T. refused to testify at the hearing.

### TENANT'S EVIDENCE

The Tenant testified that while he was not present during the September 14, 2014 incident, he was informed by A, that a third party was throwing rocks at the rental

building and that when she confronted this person, this third party sprayed her with bear mace. The Tenant further testified that the police had located the person who did this and that A was not charged with any offenses, but was rather considered a victim in the situation. The Tenant provided the police file number but confirmed he had not obtained the police file.

The Tenant confirmed that A was his friend and that she had in the past stayed with him when he was not in camp, approximately once a month for 3-4 days. The Tenant further testified that he has not left A in the apartment alone since the September 14, 2014 incident, but that she has been to his apartment since that date. He also testified that she did not have a key to his apartment. Finally, the Tenant stated that A was not able to attend the hearing as she was at work.

The Tenant stated that he had no knowledge of the circumstances surrounding the damaged door only to say that the door was broken the day before he went back to work on September 12<sup>th</sup> or 13<sup>th</sup>, 2014 and that he believed that there was no connection to the damaged door and the September 14, 2014 incident.

The Tenant denied any involvement with drugs.

At the conclusion of the Tenant's case, I again cautioned each party about the scarcity of evidence, the lack of independent evidence from the police, and the fact that most of the evidence relating to the September 14, 2014 incident was hearsay. When I explained the limitations of hearsay evidence, and the principles of natural justice L.P. stated that she did not believe the principles of natural justice should apply to the hearing.

At this time, L.P. stated she wished to testify.

L.P. testified that the first time she heard about the Tenant's claim that someone else was responsible for the pepper spraying incident was at the hearing. She further testified that she had never heard the Tenant's claim that someone was throwing rocks at the building.

L.P. confirmed that she did not speak to any other occupants about the damaged door.

L.P. testified that she spoke to another occupant on September 22, 2014. She refused to provide any details as to the identity of this occupant. L.P. was cautioned about the weight that would be given to anonymous hearsay statements.

L.P. then stated that she received a call from M.T. on September 22, 2014 and that he told her that he believed the Tenant was involved in drug dealing. She said that the purpose of M.T.'s call was because he "couldn't handle the traffic every 15 minutes". L.P. stated that M.T. called again on September 24, 2014; apparently he reiterated that he was not prepared to give evidence. L.P. stated that M.T. also stated in this telephone conversation that he wished to confirm that the Tenant was not part of any of his accusations, but that he believed A was responsible.

### Analysis

The Landlord cited the September 14, 2014 incident as being the reason for issuing the notice.

As indicated during the hearing, the evidence surrounding the September 14, 2014 incident was minimal. Two possible versions of events were presented by the parties. The Landlord submitted that a guest of the Tenant, A, was responsible for pepper spraying the rental building and damaging the door. The Tenant submitted that his guest, A, was a victim of bear spraying from a third party and that the door was broken prior to the incident, and in any case not his, or his guests' responsibility.

Although the police were involved, neither party submitted any evidence from the police file. Further, although the Landlord's agent spoke to the police, she refused to provide any information regarding that conversation.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I find that it is not possible, on a balance of probabilities, to decide whether the Tenant's guest was the perpetrator or victim in the events on September 14, 2014.

Further, I find there is insufficient evidence to find on a balance of probabilities that the Tenant, or his guests, were responsible for the damage to inside glass door.

Accordingly, I find that the Landlord has failed to show 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, or put the Landlord's property at significant risk.

The Landlord alleged the Tenant was involved in illegal activity. In support, the Landlord submitted hearsay evidence from another occupant, who apparently stated

that he suspected the events of September 14, 2014 were a result of drug dealing. No further evidence was submitted by the Landlord, save and except for another conversation the Landlord had with this other occupant who apparently stated people were coming and going every 15 minutes when the Tenant wasn't there. Notably, this occupant refused to testify or provide any written evidence. Further, the Tenant denied involvement with the drug activity alleged.

Without any corroborating evidence I am not able to find, on a balance of probabilities that the Tenant has engaged in illegal activity that has, or is likely to damage the Landlord's property and adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord.

For the foregoing reasons, I grant the Tenant's request to cancel the Notice. The tenancy will continue until ended in accordance with the Act.

The Tenant, having been successful, shall be entitled to recover of the filing fee and shall be granted a one-time credit of \$50.00 towards his next month's rent.

#### Conclusion

The application is granted and the Notice is set aside. The Tenant is to be credited the filing fee as a one-time \$50.00 reduction in his next month's rent.

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: December 09, 2014

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Residential Tenancy Branch



