



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CONNAUGHT MANAGMENT LTD. doing business as CML PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MT, CNC

### Introduction

The tenant applies to cancel a one month Notice to End Tenancy for cause dated December 30, 2014. He also seeks more time to apply, however, his application was made within the 10 day period from service of the Notice set by the *Residential Tenancy Act* and so more time is not required.

The Notice alleges that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk. That is a valid ground for eviction under s. 47 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 there were good grounds for the Notice?

### Background and Evidence

The rental unit is a one bedroom apartment in a 35 unit apartment building; one of two such buildings at that location. The landlord manages the property as part of a low income government housing project.

The tenancy started in April 2013. The current monthly rent is \$650.00. The landlord holds a \$350.00 security deposit.

The landlord's representatives allege six incidents as justifying the Notice. Each incident came to the attention of or was known by the on-site manager Mr. H.

The first incident is that on May 27, 2013, the tenant's brothers one of whom is the landlord's tenant in the adjacent building, physically assaulted another tenant in the building's hallway. It is not alleged the tenant was a participant.

The tenant says he had nothing to do with it and was out of town at the time.

In the second incident, Mr. H. reports that in July 2013 he discovered a barbeque (a "hibachi" barbeque) burning on the tenant's deck. He saw it from the ground. He reports that the flames from the barbeque were three feet high. He found that the tenant was not at home but his friends in the rental unit and were drunk. Barbequing is contrary to "building policies."

The tenant responds saying once again, he was not in town. He says his friend operated the barbeque without his knowledge.

The third incident involves the tenant keeping a gas container on his deck in September 2013. Mr. H. directed the tenant to remove it and he did. The tenant acknowledges this incident but says the gas container was not a danger.

The fourth incident occurred in September 2014 when two other tenants reported that the applicant tenant was shooting at a neighbour's cats with a pellet gun. Mr. H. called the RCMP at the time. The tenant denied it at the time and denied it again at this hearing. The complainants did not give evidence in any form.

The fifth incident occurred on November 8, 2014 when Mr. H. discovered that the tenant had disarmed a smoke detector in his rental unit and had put it in the closet.

The tenant produced letters from the landlord regarding a number of faulty detectors, directing tenants to disconnect them and report failures. The tenant says his detector was faulty.

The sixth and final incident occurred on December 29, 2014 when Mr. H. attended at the tenant's rental unit and discovered two significant burns in the new flooring.

The tenant testified that he had left Christmas lights on a table and while he was out they fell to the floor, causing the burns.

### Analysis

The burden of proof is initially on a landlord to present convincing evidence of cause. The ending of a tenancy is a very serious matter and so cogent evidence must be presented.

In regard to the first incident, the assault, I find that there is no evidence to show the tenant was involved in any way or permitted any of the culprits onto the property. This ground for eviction fails.

Regarding the second incident, the tenant is responsible for the actions of persons he permits on the premises, whether he is there or not. Unattended three foot high flames on the balcony deck of an apartment are a serious matter and could obviously pose a risk to the landlord's property. Whether or not the flames were those simply associated with the start up of a charcoal hibachi or were something else is not clear. Having regard to the fact that the incident occurred seventeen months ago and the landlord is only now citing it as cause for eviction leads me to conclude that the incident was not seen by the landlord to pose a significant risk to its property at that time. I dismiss this incident as grounds for eviction.

For the same reasons I dismiss the third incident involving a gas container on the balcony in September 2013.

Regarding the fourth incident, in the face of the tenant's denial and in the absence of any direct evidence that he was shooting a pellet gun from his balcony, I find the landlord has not provide sufficient evidence to prove this item. The second hand evidence of anonymous complainants will not suffice as proof. In any event, while such conduct, if proved, might give cause for eviction under some other subsection of s. 47 of the *Act*, it has not been shown to have created a "significant risk" to the landlord's property. This ground for eviction fails.

Regarding the fifth incident, the facts describe by both sides are consistent with the tenant experiencing a faulty smoke detector and removing it in accord with the landlord's prior written direction. This ground fails.

In regard to the sixth incident, there is no basis to conclude that the damage was anything other than accidental. It is fair to speculate that the cause was the tenant's negligence. He did not explain why he would leave lighted Christmas decorations, hot enough to melt the "vinyl planking" floor, on a table and leave his rental unit. The tenant's actions not only posed a risk to the landlord's property but in fact caused

damage. However, in all the circumstances I am not satisfied that the risk created by the tenant was of such a significance as to justify his eviction. I dismiss this item as a basis for eviction.

### Conclusion

The landlord has failed to establish good grounds for this eviction Notice.

At hearing it was pointed out to the tenant that he is responsible for repair of the floor. The landlord is entitled to demand that the tenant repair the damage and if the tenant fails to do so within a reasonable time the landlord may issue a Notice to End Tenancy under s. 47(1)(g) of the *Act*.

If after this hearing the landlord does direct the tenant to repair the floor, the work should be done by a qualified repairman. I would suggest that thirty days after demand would be a reasonable time frame for the repair work to either be done or for the repairman to have been retained and scheduled to perform the work.

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: January 27, 2015

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Residential Tenancy Branch

