



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding T. JONES ENTERPRISES INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OLC, OPC, FF

### Introduction

This hearing dealt with cross applications for dispute resolution.

The Tenant applied to cancel a Notice to End Tenancy issued by the Landlord for cause and for an order for the Landlord to comply with the Act, and to recover the filing fee for the Application.

The Landlord applied for an order of possession based on a Notice to End Tenancy issued for cause, and to recover the filing fee for the Application.

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

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Preliminary Issues

The Tenant had included in his Application the codes for a request for an order for the Landlord to comply with the Act; however, the Tenant had included no particulars of the relief he sought. Furthermore, this issue had little relevance to the main issue of possession of the rental unit. For these reasons, and pursuant to the rules of procedure, I have severed this request from the Application and the Tenant has leave to reapply.

At the outset of the hearing the Landlord objected to the Tenant submitting late evidence in this matter. The Tenant provided evidence to the Branch and the Landlord the night before the hearing. The evidence consisted of a letter to the Tenant from the

Landlord regarding rent and a letter from the Landlord informing the Tenant of upcoming maintenance to the rental unit.

As the evidence pertained to the Landlord's own documents I found there was no prejudice to the Landlord to allow the late evidence.

#### Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession?

#### Background and Evidence

The Landlord served the Tenant with a One Month Notice to End Tenancy dated May 25, 2015, by sending it registered mail to the Tenant on May 22, 2015, with an effective end date to the tenancy of June 30, 2015 (the "Notice"). The Tenant applied to cancel the Notice on May 25, 2015.

The Notice alleged that the Tenant significantly interfered with or unreasonably disturbed another occupant or the landlord; or has seriously jeopardized the health or safety or a lawful right or interest of another occupant or the Landlord.

This tenancy began in April of 2013, with the parties entering into a written tenancy agreement. The rental unit is a penthouse on the top floor of a four storey building and the rent at the outset was \$950.00 per month. The Tenant has provided the Landlord with a security deposit of \$450.00.

In accordance with the Rules of procedure the Landlord provided their evidence first, explaining why the Notice was issued to the Tenant.

The Owner spoke initially and explained he was uncomfortable corresponding with the Tenant, as the Owner has Agents i.e. the property managers at the hearing, to take care of the building. The Owner explained that the Tenant had contacted him several times and he had asked the Tenant to deal with his Agents as they were managing the property. The Owner testified that the Tenant was difficult to deal with and he had not tried to evict a renter for anything before except unpaid rent.

The Owner explained he had a rigorous maintenance program for his buildings with inspections twice per year, as the Owner want to keep his properties in good condition. The Owner testified that he has had to require his maintenance supervisor, who was the Witness at the hearing, to attend this particular rental unit with the other Agents, due to the behaviour of the Tenant. The Owner explained this was a significant cost to him, but was necessary due to the behaviour of the Tenant.

The Agent for the Landlord "D.H." testified that on May 14, 2015, during the course of an inspection of the rental unit, the Tenant significantly interfered with him entering the rental unit and seriously jeopardized the Landlord's right to inspect the rental unit with proper notice.

D.H. testified that the Tenant had acted in an intimidating and threatening manner toward him to the extent that the inspection of the subject rental unit could not be completed. The Agent testified that the Tenant had acted in an aggressive and harassing manner toward him and he felt threatened.

This particular incident began on May 12, 2015, when the D.H. and the Witness attended the rental unit to provide the Tenant with a notice that the Landlord was entering the rental unit for an inspection on May 13. The Tenant along with D.H. and the Witness agreed that they could enter the rental unit on the morning of May 14 between 10:00 a.m. and 12:00 noon. Nevertheless, the Tenant allowed the Witness to enter the rental unit on the 12<sup>th</sup> of May to inspect the electrical fuses.

On May 14, the Witness and D.H. attended the rental unit to continue the inspection. D.H. testified that as soon as the Tenant saw him entering the rental unit the Tenant became very aggressive and told D.H. he could only stand in one place in the rental unit and that he could not enter the other portions of the suite.

D.H. testified that the Tenant became upset that D.H. was looking at the Tenant's property and the ceiling in the rental unit. D.H. further testified that the Tenant came toward him in an aggressive manner and that the Witness had to stand between them to keep the Tenant away from D.H.

D.H. explained that the Tenant seemed to be very particular about anyone entering the rental unit.

D.H. testified that on three different occasions the Tenant has taken pictures of him while he was doing the work required by the Landlord around the rental unit property. The Agent also testified that the Tenant had videotaped him working.

The Agent testified that the Tenant would follow him around closely when he was doing the previous inspection in the rental unit in 2014, and the Tenant would look over his shoulder at everything he was writing. He testified the Tenant was acting very aggressively during this previous inspection and was "getting in his face."

The second instance complained of arose from a series of noise complaints lodged against the Tenant. The Notice did not deal with the noise complaints, but rather the actions of the Tenant toward other occupants of the building following the noise complaints.

D.H. testified about an incident that occurred on November 3, 2014, when there was a fire alarm at the building at around 9:30 p.m. Apparently, earlier that day, the Agents for

the Landlord had provided the Tenant with a notice that there had been noise complaints against him. While the other occupants of the building and the Tenant assembled outside the building due to the fire alarm, the Tenant asked four female tenants if they had been the ones who lodged a noise complaint against him.

In evidence the Landlord provided letters from four of the female occupants who were approached by the Tenant that evening. One of the writers explains that the Tenant asked her if she had made the noise complaint about him and she informed the Tenant that he should speak to the property managers. The writer felt the Tenant was standing too close to her and acting aggressively and she became uncomfortable with the conversation and the Tenant's physical proximity. She felt intimidated by the Tenant.

A second letter came from a writer who also witnessed the Tenant's behaviour on the night of the fire alarm. She writes that his body language seemed to be such that he was using fear of retribution as a deterrent. She writes that he questioned several of the female renters about where they lived in the building and that he was repeatedly asking who had made the noise complaint about him.

A third letter writer explains that the Tenant confronted her and asked if she had made the noise complaint. She explained she lived below him, but did not make the complaint. The writer states that she and another renter felt he was in their personal space and made them both feel uncomfortable.

A fourth letter comes from another renter that witnessed the Tenant ask a female renter several times if she had made the noise complaint against him, after she had informed him to speak to the property managers. The writer of this letter states she also felt uncomfortable with the situation. She also writes that the Tenant stated he just wanted to find out so he could apologize to whoever had complained.

The Agent for the Landlord explained that these letters and the incidents that occurred during the inspections indicate the pattern of behaviour of the Tenant has become more intense and his behaviour seems to be escalating.

The female Agent for the Landlord "M.H." testified that she had conversations with other female renters in the building and that she and the others were hesitant to be in the laundry room alone with the Tenant due to his behaviour.

The Landlord called a Witness who is the maintenance supervisor for the Landlord. The Witness was asked to recount what he saw during the inspection of May 14, 2015.

The Witness explained that he and D.H. had gone to the rental unit together two days prior to the inspection to talk to the Tenant and give him the notice to enter. They agreed to come back two days later for the inspection.

The Witness testified that on the day of the inspection when he and D.H. entered the rental unit the Tenant immediately got agitated and told D.H. he could not enter the

rental unit. The Witness testified that the Tenant told D.H. he could stand in one place but could not enter the rental unit. The Witness said he tried to do the inspection but the Tenant was becoming too agitated and the Witness felt threatened and concerned for the safety of D.H.

The Witness testified he had to step in between the Tenant and D.H. because the Tenant was right in D.H.'s face, just inches away.

The Witness testified that he was not sure what reason the Tenant had to be so aggressive with D.H. The Witness testified he has been working for the Landlord for 25 years and had never had confrontations with anyone like he had seen with the Tenant.

The Witness explained the Tenant had got in the face of D.H. at the inspection the year before and that he was concerned about their safety.

The Witness testified that he thought the Tenant was losing control during the May inspection and he ended the inspection early. He was concerned that the Tenant may hurt D.H. or himself, due to the aggressive attitude of the Tenant.

The Tenant was then given the opportunity to cross examine the Witness. Initially the Tenant began making statements and was leading his direct evidence. At that time I explained to the Tenant the purpose and process of a cross examination.

The Tenant asked the Witness if he had ever been rude to the Witness. The Witness answered that he had often said hello to the Tenant when he saw him around the building and that the Tenant would look right through him and never say reply with a hello. The Witness testified he tried several times to be courteous and say hello to the Tenant, but the Tenant continued to refuse to acknowledge the Witness, and this caused him to not speak with the Tenant in the hallway anymore.

The Tenant asked the Witness if he had been pleasant to him on the day of the May 14 inspection. The Witness answered that initially the Tenant greeted him nicely when they came to the door, however, the Tenant got very agitated when he saw D.H. The Witness testified that the Tenant immediately blew up because D.H. was there.

The Tenant asked the Witness if he was pleasant the other times the Witness came to the rental unit. The Witness replied that he would never meet with the Tenant by himself, and that the Tenant was constantly complaining about things in the building. He gave an example of a time when the Tenant was being very confrontational with him about repairs being done to the water system at the building. The Tenant was upset because the water was shut off. The Witness explained that they had given the Tenant a notice about this. The Tenant then told the Witness he had not seen or read the notice and apologized.

The Witness stated that nearly every time he saw the Tenant he was unpleasant. The Witness testified that in 25 years of doing work for the Landlord the Tenant was the first renter he had such issues with.

The Tenant asked the Witness if he had been unpleasant during the inspection in the previous year. The Witness stated that last years' inspection the Tenant was very nasty to D.H. and was insisting he had a right to review the inspection documents and receive a copy of these. The Witness testified that he thought the Tenant was going to hit D.H. during the inspection the previous year.

The Tenant then explained that he had a shoulder injury and asked the Witness what made him think he would hit D.H., or be much of threat to him, considering that D.H. is a much larger man then him.

The Witness replied he had seen the Tenant riding a heavy motorcycle to the building many times and carrying golf clubs around the building so it did not appear the Tenant had a bad shoulder. The Witness testified that the Tenant's attitude feels like he is going to strike someone and he is worried for the other renters and the Agents for the Landlord in the building.

The Witness agreed with the Tenant that he had not seen the Tenant use profanity or verbally threaten anyone. Although the Witness stated it was the behaviour of the Tenant that was threatening.

The Tenant asked the Witness about the inspection and where he had gone in the rental unit. The Witness explained he had gone around the rental unit into several rooms but did not complete the inspection because they did not need the trouble the Tenant was causing and they decided to leave.

The Tenant asked the Witness about what was not done in the inspection. The Witness explained that it ended because he had to get between the Tenant and D.H. because he felt the Tenant was threatening D.H. being in his face.

The Tenant explained that D.H. was 6' 5" and 250 pounds and bigger than the Tenant, and asked how the larger man could feel threatened. The Witness replied that he thought the Tenant was threatening D.H. because D.H. can't stand up for himself and that the Tenant liked to bully D.H. because he knew he could get away with it.

The Landlord's Agents had nothing on reply for the Witness and the Witness was then excused. This completed the Landlord's direct evidence.

The Tenant then provided evidence on his own behalf.

The Tenant testified that all the problems began when he moved into the rental unit in 2013, because the Landlord should have painted the rental unit as it had been occupied for 42 years by two previous renters. The Tenant had asked D.H. if the rental unit was

going to be painted and the Tenant alleged that D.H. had told him it was going to be painted, but it was not painted before he moved in, just some picture holes were filled in.

The Tenant testified that he did not want to appear confrontational, but rather he wanted to assert his rights as a tenant. The Tenant explained he had taken pictures of D.H. when he was working on the roof of the building because D.H. was too close to the edge of the building and he wanted these to show the Owner, as this was apparently a violation of workers compensation rules. The Tenant alleged that D.H. is a bit of a bully, not him.

The Tenant also explained that when D.H. was working on the roof of the building he should have been given notice, as this was invading the Tenant's privacy in the rental unit.

The Tenant testified that D.H. took five weeks to inform him of the noise complaints and that had he known, he would have been quieter sooner. He testified that he did approach other occupants of the building on the night of the fire alarm because he did not know who had complained about him. He agreed that when he asked one renter if it was she that complained about the noise, she informed him that he should talk to the building managers.

The Tenant testified he had been totally aware of the noise complaints. The Tenant referred to one of the letters in evidence from the four females and cited this as the most accurate account of the incident. He testified he did not force himself on them or use profanity and he walked away after the woman told him to speak to the managers.

He testified that he was only interested in resolving the noise issue, and alleged that the complaining renters had been coached to do so.

The Tenant testified that the notice the Landlord provided that they were entering the rental unit did not explain that D.H. would be entering the rental unit. The Tenant testified that on the day of the May 14 inspection D.H. barged into the rental unit and the Tenant felt uneasy with him being there. He testified that the notice had been very specific that only the Witness would be entering the rental unit, and he did not like D.H. barging into the rental unit.

The Tenant alleged that D.H. was trying to incite an issue with the Tenant by entering the rental unit. The Tenant testified he had the right to refuse entry to D.H. as he was not on the notice to enter. The Tenant denied he got in the face of D.H.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Landlord has proven that the Tenant has interfered with the Landlord's lawful rights and has significantly interfered with the Landlord's agent, D.H. I further find that the Tenant has seriously jeopardized the Landlord's lawful rights, such as to enter a rental unit for proper purposes i.e. an inspection for maintenance issues, after being given the proper notice to enter.

The Landlord is obligated under section 32 of the Act to provide and maintain a rental unit that complies with health, safety and housing standards, and make sure it is suitable for occupation. The Landlord is also allowed under section 29 to enter the rental unit after providing the required notice to do so.

I find that the Tenant has significantly interfered with the Landlord's Agent D.H., as he was going about his lawful duties on behalf of the Landlord. The Tenant has given no reasonable explanation of why he wanted to prevent D.H. from entering the rental unit. The Tenant is not able to prevent the Agents of the Landlord from entering the rental unit for lawful purposes with a lawful notice.

I accept the testimony of the Witness that the Tenant was in the face of D.H. and was behaving in an aggressive, hostile manner. I also accept the testimony that the behaviour of the Tenant caused the Agents to end the rental unit inspection early, prior to completing the lawful work of the Landlord.

While the Tenant denied this behaviour, I note that he did not put this issue to the Witness when he was cross examining the Witness. When I explained this to the Tenant at the conclusion of the hearing he wanted to call back the Witness for further testimony on this issue. I explained to the Tenant that I had informed him of the procedure for cross examination and questioning the Witness on the Witness' testimony. I had also asked the Tenant several times if he had anything further to ask the Witness, during the cross examination period, and the Tenant did not question the Witness about this behaviour.

While the incidents that occurred with the other occupants of the building on the night of the fire alarm occurred several months ago, I do find the behaviour of the Tenant at that time adds support to the validity of the Landlord's Notice to End tenancy. The Tenant should have asked the Agents of the Landlord about the complaints and their source, rather than confronting the occupants personally and in a threatening manner. I find that the behaviour of the Tenant here seriously disturbed the female occupants, as set out in the Notice.



For all these reasons I find that the Tenant has breached section 47 of the Act, and I find the Landlord's Notice should be upheld. I allow the Application of the Landlord and dismiss the Tenant's Application to cancel the Notice without leave. I order that the Landlord may retain **\$50.00** from the security deposit held, in compensation for the filing fee for the Application.

The Landlord and the Tenant discussed the end date of the tenancy. The Landlord requested an order of possession to be effective on **August 31, 2015, at 1:00 p.m.** and I grant the order in those terms. I note the Tenant agreed to pay the rent for July and August of 2015. The Tenant acknowledged he was being allowed to remain in the rental unit two months past the effective date of the Notice to End Tenancy. The Tenant further agreed he would live peaceably in the rental unit.

### Conclusion

The Tenant's Application to cancel the Notice to End Tenancy is dismissed without leave to reapply. The Landlord has proven the Tenant breached section 47 of the Act. The Landlord's Application for an order of possession is allowed and they may retain \$50.00 from the security deposit for the filing fee for the Application. The Landlord is granted an order of possession effective at **1:00 pm August 31, 2015.**

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 10, 2015

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Residential Tenancy Branch

