



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SOCIETY FOR THE CHRISTIAN CARE OF THE ELDERLY  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      CNC FF

### **Introduction**

This hearing was convened in response to an application by the tenant to cancel a Notice to End tenancy for Cause dated May 31, 2015 and to recover the filing fee associated with the application. The tenants and their advocate, three representatives of the landlord, and a witness for the landlord participated in the teleconference hearing.

The parties acknowledged receiving the respective evidence of the other - also provided to this hearing. The parties were permitted to provide *relevant* evidence and fully participate in the conference call hearing. I have reviewed all evidence before me that meets the requirements of the Rules of Procedure. Both parties submitted an abundance of document evidence; however, only *relevant* evidence to the issues respecting matters up to and including May 31, 2015 - pursuant to the subject Notice to End in dispute - are addressed in the Decision.

### **Issue(s) to be Decided**

Is the notice to end tenancy valid?

Does the landlord have *sufficient* cause to end the tenancy?

### **Background and Evidence**

I have benefit of the Notice to End Tenancy in dispute served on the tenant on May 31, 2015 with an effective date of June 30, 2015. The landlord sought to end the tenancy for the indicated reason pursuant to **Section 47(1)(d)(ii)** of the Act: *the tenant: has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

The onus is on the landlord to prove they issued a valid notice to end the tenancy for valid and sufficient reason the tenant *seriously* jeopardized or placed in peril the health or safety or lawful rights of occupants or the landlord. The landlord orally requested an

Order of Possession in the event I uphold their Notice or I dismiss the tenant's application. All parties provided affirmed / sworn testimony.

### *Landlord's Evidence*

The landlord relies on their document evidence and their witness testimony, FT. The landlord summarized they sought to end this tenancy because of the tenant's *lack of action* to avert the purported actions of another tenant of the residential complex - RA - determined by the landlord to be involved in conspiring to build a bomb and "blowing up" the common residential complex of 180 tenants. The landlord testified the applicant tenant simply, "went along with the plan of RA" to detonate a bomb and in so doing, "did not do the right thing" and "by (their) omission" placing all occupants in peril. The landlord effectively argues the tenant of this matter is an accomplice in a plan to build the bomb and detonate it to settle grievances with the landlord. The underlying purported conspiracy of this matter was made known to the landlord by a previous tenant, FT, now vacated from the residential complex, who "was made uncomfortable" by their knowledge of the claimed bomb making plan. FT reported to the landlord the tenant of this matter was present during conversations about a bomb – one time in the presence of other tenants - however was not the lead participant in planning a bomb. None the less, on receiving the information from FT the landlord reported it to Police. Police investigated FT's claims with support from their specialists. Police interviewed the landlord representatives and FT independently, who then also visited RA . The *terrorist division* further assessed the entire situation and ultimately reported to the landlord they did not deem RA, or the claimed plan to build a bomb, a threat and "the risk to be low". The landlord testified they determined the information of their witness as more reliable: deciding that RA, never the less, posed a threat to the occupants of the residential building and the tenants of this matter were accomplices "guilty by omission" and going along with RA's plan to bomb the building and frame others.

**The landlord provided Witness FT - testifying under oath.**

*The witness testified they used to work as an "underwater blaster" and familiar with explosives. They determined that over conversations tenant RA and the applicant tenant were obtaining bomb making information from him with the intent of building a bomb and blowing up the residential complex to punish the landlord and framing another tenant, RD, for the bombing. The witness testified that RA and the applicant tenant set their sights on the landlord because the landlord did not evict RD when requested to do so by RA and the applicant tenant.*

*The witness testified that they made a mental connection the applicant tenant and RA were conspiring to blow up the complex when - following the anniversary*

*of the Oklahoma City bombing event in 1995 - they felt they were "being pumped" for information about the bomb widely reported used by the bomber of the Oklahoma City event. RA did all of the questioning of the event while the applicant tenant was present in conversation. The witness confirmed they relayed their thinking to Police who thanked him for his information. The witness stated they vacated the building on their fear of retaliation from RA, and their disinterest in "fighting" the landlord.*

### *Tenant's Response*

The applicant tenant disputes all the claims and allegations of the witness. They deny being part of the claimed conspiracy to bomb the building or that they have knowledge RA plans to bomb the building. The applicant tenant alleges the landlord has simply chosen to rely on the hearsay information of their witness over the complete lack of evidence of any wrongdoing by the applicant tenant. But moreover, the applicant tenant claims there is no evidence, other than the thoughts and hearsay information of the witness, of involvement with RA in any illegal activity. The applicant tenant stated they have never garnered the attention of Police and certainly not within the scope of the witnesses' allegations.

### **Analysis**

In this type of application, the onus is on the landlord to provide evidence the Notice to End was issued for the reason stated and that the reason is based on *sufficient* evidence to end the tenancy. On balance of probabilities I find the landlord has not met their burden in this matter.

I find I prefer the landlord's *own evidence* over that of their witness. I find the landlord's witness provided testimony based on their speculation and personal interpretation of the events. I prefer the landlord's evidence that they provided the same evidence and concerns to Police and their expertise in such matters who determined the evidence did not support sufficient risk or a threat. Moreover, I find the landlord has not proven, on balance of probabilities, that the applicant was a willing accomplice in conduct which seriously jeopardized the health or safety or lawful right of others – and by their denial and omission of such claims should therefore lose their tenancy.

I find the landlord has provided hearsay evidence but no proof to support their Notice to End was issued to the tenant for sufficient reason as stated in the Notice to End and required by the Act to operate to end a tenancy. I have not established the landlord

issued the tenant a valid Notice to End for the reason stated in the Notice. As a result, **I Order** the Notice to End of this matter dated May 31, 2015 **cancelled**, or set aside.

As the tenant was successful in this matter they are entitled to recover the filing fee for their application.

**Conclusion**

The tenant's application is granted. The landlord's Notice to End is **set aside and is of no effect**. The tenancy continues in accordance with the tenancy agreement.

**I Order** the tenant may recover their filing fee by deducting **\$50.00** from a future rent.

**This Decision is final and binding on both parties.**

*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: July 21, 2015

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Residential Tenancy Branch

