



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on June 11, 2015 to cancel a notice to end tenancy for cause.

The Landlord, the Co-Landlord and the Tenant appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. A legal advocate for the Tenant also appeared for the hearing and assisted the Tenant in making submissions. The parties had no issues with the attendance of a trainee with the legal advocate who only observed during the hearing.

The Landlord confirmed receipt of the Tenant’s Application by registered mail. Both parties also confirmed receipt of each other’s evidence prior to the hearing. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present evidence, make submissions to me, and cross examine the other party on the evidence provided. While I have carefully considered the evidence, I have only documented that evidence which I relied upon to make findings in this Decision.

### Issue(s) to be Decided

Has the Tenant established that the notice to end tenancy ought to be cancelled?

### Background and Evidence

Both parties confirmed that this tenancy for the rental suite in a residential building started on May 1, 2013 for a fixed term of one year. The tenancy then continued on a month to month basis. Rent for this tenancy is currently payable by the Tenant in the amount of \$660.00 on the first day of each month.

The Landlord confirmed that he had served the Tenant with a 1 Month Notice to End Tenancy for Cause (the "Notice") on June 8, 2015 by posting it to the Tenant's door. The Notice was provided into written evidence and states a vacancy date of July 31, 2015. The Notice shows the reasons for ending the tenancy are because:

- the Tenant has seriously jeopardised the health and safety or lawful right of the Landlord.
- the Tenant has engaged in an illegal activity that has or is likely to: adversely affect the quiet enjoyment, security, safety or physical wellbeing of the Landlord; and jeopardise a lawful right or interest of the Landlord.

The Tenant confirmed receipt of the Notice on June 8, 2015 and disputed the Notice by making an Application on June 11, 2015. The Landlord was invited to present evidence around the reasons provided on the Notice.

The Co-Landlord testified that they had received a number of complaints from residents that the Tenant is smoking marijuana in her suite. The Co-Landlord testified that she had spoken to the Tenant about this on several occasions but this activity is continuing. The Co-Landlord testified that in January 2015 she observed the Tenant lurking in the stairwell of the building. Suspecting that the Tenant was selling drugs, the Co-Landlord confronted the Tenant about this during a visit to her suite on February 1, 2015. The Co-Landlord testified that when she attempted to address the issue with the Tenant, the Tenant told her that she should leave otherwise the Tenant would hurt her.

The Landlord submitted that this was a threat made which was contrary to the tenancy agreement. The Co-Landlord wrote the Tenant a letter dated February 2, 2015 in which the Tenant is warned that *"In the future the next time you threaten my safety or offer inappropriate aggression you will be served with a one months notice to end tenancy."*

The Co-Landlord was asked about incidents that had occurred after this breach letter had been given to the Tenant. The Landlord and Co-Landlord both testified that they are property managers of the residential building and since the time of issuing the breach letter, the Tenant has been aggressive, confrontational, angry and combative towards them. The Landlord and Co-Landlord were asked to provide specific examples.

They both testified that the Tenant had slammed doors after walking past them and had been threatening towards her with body language. They both confirmed that no verbal threats have since been made by the Tenant but they both feared for their safety working in the building. The Co-Landlord testified that the Tenant is a big person and

therefore poses a real threat to them. The Landlord testified that they have attempted to evict the Tenant several times as she is causing a problem in the building.

The Tenant's legal advocate cross examined the Landlord and asked whether the Landlord had any witness statements or police reports from other residents complaining about marijuana smoke caused by the Tenant. The Landlord replied submitting that he did not because other residents were reluctant to provide evidence in writing.

The Tenant's legal advocate asked the Landlord whether he had cameras in the building. The Landlord replied that there were cameras but not in the stairwell of the building. However, the Landlord explained that there were cameras above building doors. The legal advocate responded by submitting that this should have resulted in video footage of the Tenant slamming the door as alleged by them. The Landlord responded stating that he did not have any video evidence.

The Tenant disputed all the reasons on the Notice and denied the allegations made by the Co-Landlord that she had ever threatened either one of them. The Tenant testified that she does not smoke in the rental unit and is trying her best to avoid the Landlords by taking steps such as doing her laundry off site.

The Tenant denied that she threatened the Co-Landlord. The Tenant testified that it was the Co-Landlord that told her during her visit to the rental suite on February 1, 2015 that she had friends who could make her life very difficult. The Tenant submitted that the Landlord and Co-Landlord have been trying to evict her using tactics such as notices of rent increase, claiming that the tenancy had ended which was disproved in a previous hearing, and claiming that the Tenant is not allowed cats.

The Tenant testified that she has a disability and therefore she does not understand how her body language was threatening to the Landlords. In response to the Landlord's written evidence in which the Landlord claims that the Tenant admitted to threatening the Landlord in a letter dated February 17, 2015, the Tenant denied this. The Tenant referred to the letter the Landlord was relying on in which she writes, "*...in regards to feeling threatened by me, I assure you that was not my intent; I was simply tearful and very upset by your allegations on Feb 1/15.*"

The Tenant submitted that this was not an acknowledgement that she had threatened the Co-Landlord, rather it was a way of explaining to the Landlord that by her verbally disputing the allegations during the conversation were not intended as a threat to the Landlord.

#### Analysis

I find that the Landlord served the Tenant with a Notice that complied with Section 52 of the Act and I accept that the Tenant received the Notice on June 8, 2015. Therefore, I find that the Tenant made the Application to dispute the Notice within the ten day time limit stipulated by Section 47(4) of the Act.

An ending of a tenancy is a serious matter. When a landlord issues a tenant with a notice to end tenancy for the reasons in this case, the landlord bears the burden of proving the reasons on the Notice disputed by the tenant.

I have carefully examined the evidence of both parties and I find that the Landlord's allegations against the Tenant result in one party's word against the others. The Landlord has failed to provide sufficient and corroborative evidence that the Tenant threatened the Landlord on February 1, 2015 at the rental suite. The Co-Landlord was on her own and there is no independent evidence, such as police reports, witness statements, or video footage to verify the Co-Landlord's disputed testimony in this respect.

In examining the Tenant's response letter dated February 17, 2015, I find this is not sufficient evidence that the Tenant admitted she had threatened the Landlord. I find that the Tenant's explanation as to the meaning of the letter is plausible and nowhere in this letter do I find clear evidence of the Tenant's admission of threats to the Co-Landlord. Neither do I find that it can be concluded from the letter that a threat was made. Therefore, I find the Landlord has failed to provide sufficient evidence that the Tenant threatened the Landlord on February 1, 2015.

Furthermore, I also find that the Landlord has failed to provide sufficient evidence to show that the Tenant continued to threaten and create an unsafe work environment for the Landlord and the Co-Landlord to work in. The Landlord failed to provide witness evidence in relation to complaints made by other residents of the Tenant smoking marijuana in her apartment. There is also no video evidence to show that the Tenant was slamming doors in areas where the Landlord testified there are cameras. The Landlord also failed to provide sufficient evidence of threats being made by the Tenant through her body language or due to her large size.

I find the Landlord relies on general statements regarding the Tenant causing a disturbance in the building which lacked specific verifiable incidents. I find that an allegation that the Tenant uses body language to threaten the Landlords is not sufficient cause for me to end this tenancy. Therefore, I find that the Landlord's evidence for the reasons stated on the Notice is no more compelling than the Tenant's evidence.

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 the claim. Therefore, it must fail. As a result, I cancel the Notice dated June 8, 2015. The tenancy will continue until it is ended in accordance with the Act.

Conclusion

The Landlord has failed to provide sufficient evidence to prove the Notice. The Tenant's Application is granted and the Notice is cancelled. The tenancy will continue until it is ended in accordance with the Act.

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: August 12, 2015

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Residential Tenancy Branch

