



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Witmar Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenants' application to cancel a notice to end tenancy for cause. The tenants, an advocate for the tenants and the landlord participated in the teleconference hearing.

In the hearing, each party confirmed that they had received the other party's evidence. The parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Preliminary Issue – Landlord's Late Attendance to Hearing

When a tenant applies to cancel a notice to end tenancy, the landlord has the burden of proof to establish that the notice is valid. If the landlord does not attend the hearing, the arbitrator may cancel the notice to end tenancy. In this case, the landlord did not call in to the hearing until more than 11 minutes after the commencement of the hearing, and after I had informed the tenants that, based on the landlord's non-attendance, I would be cancelling the notice. I determined that in the interest of procedural fairness, I would hear from the parties and make a decision in this matter.

### Issue(s) to be Decided

Is the notice to end tenancy for cause dated October 27, 2015 valid?

### Background and Evidence

The tenancy began on May 1, 2015. The two tenants occupy an apartment in a multi-unit building that has secure parking.

On October 27, 2015 the landlord served the tenants with a notice to end tenancy for cause. The notice indicates that the reasons for ending the tenancy are that the tenant(s) did the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- put the landlord's property at significant risk;
- engaged in illegal activity that
  - damaged the landlord's property, and
  - adversely affected the quiet enjoyment, safety or physical well-being of another occupant or the landlord; and
- breached a material term of the tenancy agreement and did not correct the breach within a reasonable time after written notice to do so.

### *Landlord's Evidence*

The landlord stated that the tenants' actions have caused police to attend at the rental unit on more than 10 occasions, and as a result the landlord has lost tenants and rental revenue, and a property manager quit.

The landlord submitted evidence including an incident report dated October 13, 2015. The report, apparently written by an agent of the landlord, described a robbery that occurred in the building parkade in the early morning of that date. The author of the report indicated that they viewed the surveillance film and identified a "Caucasian male in 20's... going into multiple vehicles." The report indicates that the author then attended at the tenants' unit and enquired whether one of the tenants had entered the parkade that morning at approximately 4:00 a.m., and the author received contradictory stories from the two tenants and verified that the younger tenant's fob matched the numbers of the fob used to enter the parkade at 4:00 a.m. The landlord also submitted a copy of a still from the surveillance film that depicts a very grainy, indistinct image of a person wearing a cap or hat.

The landlord also submitted five complaint letters from other occupants, two of which are undated and three of which are dated November 8, 2015, November 9, 2015 and November 19, 2015; and three warning letters from the landlord to the tenants, dated November 8, 9 and 10, 2015.

### *Tenants' Response*

The tenants denied that they were at all involved in breaking into the cars in the parkade. The tenants also denied holding parties or otherwise causing any disturbances. The tenants and their advocate pointed out that there is no proof that the tenants did anything that the landlord alleged, and the complaint letters and warning letters were all issued after they were served with the notice to end tenancy for cause.

### Analysis

I find that the notice to end tenancy for cause dated October 27, 2015 is not valid.

The complaint letters and warning letters appear to address incidents that allegedly occurred after the notice to end tenancy was served. A landlord must establish that cause existed at the time that the notice was issued, not afterward.

The only incident that I therefore can consider is the robberies in the parkade. I am not at all satisfied, on the evidence presented, that the tenant(s) or a person permitted on the property by the tenant(s) was engaged in robbery in the parkade on October 13, 2015.

I therefore cancel the notice to end tenancy for cause dated October 27, 2015.

### Conclusion

The notice to end tenancy for cause dated October 27, 2015 is cancelled, and the tenancy will continue until it ends 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: December 30, 2015

---

Residential Tenancy Branch