



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BROWNROS. AGENCIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

CNC

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order to cancel a Notice to End Tenancy for Cause.

This matter was originally convened on February 18, 2016 with a different Arbitrator; however, the matter was adjourned as the Residential Tenancy Office had changed the dates for the hearing and the tenant's advocate was not available on the new date. The original Arbitrator was not seized to hear this application. The matter was reconvened on today's date.

The tenant, the tenant's advocate and two agents for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy for cause?

### Background and Evidence

The parties agreed that this tenancy started on December 01, 2014 for a fixed term tenancy of one year, thereafter reverting to a month to month tenancy. Rent for this unit is \$695.00 per month and is due on the 1<sup>st</sup> of each month.

The landlord testified that the tenant was served a One Month Notice to End Tenancy for Cause (the Notice) on December 23, 2015. The Notice had two reasons to end the tenancy as follows and has an effective date of January 31, 2016:

- 1) *The tenant or a person permitted on the residential property by the tenant has*
  - (i) *Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
- 2) *the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*
  - (ii) *Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.*

The landlord testified that the tenant was involved in an incident where a person overdosed in the building and was removed from the tenant's unit down in the elevator through the lobby and out onto the curb by two other guests of the tenants. The police arrived and asked to see the landlord's video footage of the incident. The video footage shows this man being dragged out of the elevator, through the lobby and then out of the building onto the curb. The tenant was not shown on the video outside but was seen outside calling 911 by passerby's.

When the police viewed the video footage they recognized the man and the woman and the police then went to the tenant's unit and found the girl identified in the video footage in the tenant's unit. Around 15 minutes later the police returned to the tenant's unit and knocked loudly. The landlord believes the person who overdosed was in the tenant's unit with the tenant and these other two people and they tried to cover this incident up by dragging this person who overdosed out to the curb. This incident occurred on December 23, 2015 in the early hours of the morning.

The landlord testified that this incident was reported by other tenants living on the same floor as the tenant. Only one of these tenants put their complaint in writing and this has been submitted in documentary evidence. The other tenants are too afraid to put anything in writing but have informed the landlord that they will give notice to end their tenancies if the landlord does not act on their complaints.

The landlord testified that on February 12, 2016 there was another incident at 1.40 a.m. A man at the front door rang the manager to be let in as the tenant's buzzer was not working. This man identified himself as the tenant's worker or support person. The manager's husband went down to speak to this person who became abusive towards the manager's husband and refused to leave the building.

The landlord testified that the tenant had been given a warning letter about disturbances in February, 2015 but these are the first incidents that have occurred since then. The landlord seeks to have the Notice upheld and an Order of Possession effective at the end of March, 2016.

The tenant's advocate submitted that in the early hours of December, 23, 2015 the tenant's neighbor's guests knocked on the tenant's door when they discovered a person in the laundry room experiencing a medical emergency. The female person (LR) asked to use the tenant's phone to call 911. The male and the female carried the unconscious person out of the building so the ambulance attendants could attend to him quickly. The tenant's advocate referred to the letter provided in documentary evidence from the female person LR.

The tenant's advocate submitted that shortly after the police attended at the tenant's unit, asked the tenant some questions and searched her unit. The tenant was not charged with an illegal activity. Later the police returned and were knocking loudly on the tenant's door; however, the tenant was not home at the time and was unable to respond. The tenant's advocate submitted that the tenant only acted responsible to help deal with a medical emergency and did not disturb other occupants or the landlord. The tenant's advocate argued that it should make no difference if the medical emergency was drug related or someone having a heart attack it was reasonable for the tenant to open her door to these people to assist in the emergency. If the police later

came and started knocking loudly on the tenant's door then this was not the tenant causing the disturbance.

The tenant's advocate submitted that the tenant was not involved in any drug related activities. The tenant's advocate referred to a letter from another tenant living down the hall who has written that she was not disturbed and finds the tenant to be a quiet neighbor.

The tenant testified that she does know the man and women LR who came and knocked on her door seeking help but they were not in the tenant's unit that night but in a neighbor's unit. The tenant testified that she also knew the man who took the overdose but was not aware that he was in the building that night until the others came and knocked on her door. The tenant testified that she was informed that they had found the man who had overdosed in the laundry room as they were leaving another tenant's unit. The tenant testified that she did not help them take this man down to the lobby she remained in her unit for a while but was unable to call 911 as her phone did not work.

The tenant testified that the police did come and ask her some questions and searched her unit but when they returned about an hour later the tenant had gone out to MacDonald's and a neighbor informed the tenant that the police had been knocking loudly on her door.

The tenant's advocate asked the landlord if they got the name of the person who identified himself as her support worker in February. The landlord responded that they did not ask for his name he just demanded to be let in and introduced himself as the tenant's support worker. The tenant's advocate asked the landlord if other tenants were going to move out because they were afraid after this incident in December, it is now March and how many tenants have moved out. The landlord responded that one tenant has given notice and one tenant has asked to be moved off that floor.

The tenant testified that the two people who knocked on her door had asked to use her phone but the phone was dead. The tenant testified that someone else must have called 911. The tenant's advocate argued that whether or not the tenant's phone was used to call 911 the tenant still acted responsibly to help someone having a medical emergency when she answered her door that morning.

The landlord argued that a responsible person would not have moved someone experiencing a medical emergency. All three of these individuals knew the tenant and were all in the building on the same night. The landlord finds this suspicious. The landlord referred to the tenant's written statement in which she said she was not at the front of the building yet the tenant was seen outside. The female person LR in her written letter also states the tenant called 911. The landlord questions the tenant's credibility.

The tenant seeks to have the notice cancelled and for her tenancy to continue.

### Analysis

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The landlord has provided two reasons on the notice. I find, having reviewed the evidence before me, that the main issue is whether or not the person who overdosed and the other two people were in the tenant's unit and whether or not a disturbance was caused by the tenant or the tenant's guests. The landlord has testified that she believes these three people were in the tenant's unit and finds it suspicious that the tenant knows all three people and that these people were all in the building at the same time. The tenant testified that the two people were guests of another tenants and the person who overdosed was found by them in the laundry room of the building. The landlord relies on a letter written by another tenant who has written that "last night very late I peeped out my door because of a noise from 209 and saw a man and a woman dragging another man down the hallway to the elevator. A bit later I saw and heard the police at the woman's door..."

This letter from the landlords witness is unsigned but describes the writer as a worried renter. The letter does not state that they saw the person being dragged out of the tenant's unit only that they were seek dragging him down the hallway to the elevator. It is important to note that 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 their claim and the claim fails.

The landlord has insufficient evidence to show that these three people were in the tenant's unit when this person overdosed and insufficient evidence to show that he was not found in the laundry room as described by the tenant. Mere suspicion on behalf of the landlord is not sufficient corroborating evidence. Furthermore, the police questioned the tenant, searched her unit and took no further action. The landlord has provided insufficient evidence to show the tenant was involved in carrying this unconscious man out of the building and has insufficient evidence to show the tenant was outside the building or involved in this incident in any way other than to assist when two people knocked on her door.

If the police came back later to the tenant's unit and disturbed other tenants with their knocking then this is out of the tenant's control if she was not at home.

With regard to the incident that occurred in the early hours of the morning of February 12, 2016. While I accept the building manager's testimony concerning this incident there is insufficient evidence to show that this person who was demanding entry to the building was a support worker for the tenant or was an invited guest of the tenant. I find it highly unlikely that a support worker would be working at that time of the morning. While it is unacceptable for the building manager to be woken up in the earlier hours of the morning if this person was not an invited guest of the tenant then the tenant has little control over this person's actions.

Consequently, in the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

I do however, caution the tenant to ensure she is not involved in any disturbances in her unit or the building as in doing so could result in the tenant jeopardizing her tenancy.

### Conclusion

The tenant's application is allowed. The One Month Notice to End Tenancy for Cause dated, December 23, 2015 is cancelled and the tenancy will continue.

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: March 03, 2016

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Residential Tenancy Branch