



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Benchmark Renovation Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF, O

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a 1 Month Notice to End Tenancy for Cause. Both parties appeared. No issues regarding the exchange of evidence were identified.

Although the notice to end tenancy named a company as the landlord the tenant had filed this application naming the resident manager personally as the landlord. The resident manager stated that he had the authority to speak for the company and he consented to the amendment of the application for dispute resolution so that the company was named as the respondent landlord. The tenant also agreed to this amendment.

### Issue(s) to be Decided

Is the 1 Month Notice to End Tenancy for Cause dated June 9, 2016 valid?

### Background and Evidence

This tenancy commenced April 2015. The monthly rent of \$820.00 is due on the first day of the month.

The rental unit is a two story townhouse. There are 32 units in the complex. The tenant's unit is one of cluster of eight townhouses. Each unit in this cluster has sliding glass doors at the back which open onto a small patio. There is about fifteen feet between the sliding doors and the trees that border the property. There are no fences or dividers between the patios. The resident manager testified that the trees do cause noise to echo in this area. The general expectation in the complex is that quiet time starts at 10:00 pm.

The tenant lives in #6. His seven year old son lives with him full-time and his five year old son lives with him every weekend.

The issue is the conflict between the tenant and his neighbour in #7.

The resident of #7 did not testify at the hearing but she did submit a written statement. That statement was part of the landlord's evidence and was considered in the making of this decision.

According to all parties there was an incident between the tenant and #7 on Mother's Day 2015. The tenant says that around noon he was cleaning his house and playing his music when #7 banged on the walls and yelled belligerently at him. He responded in kind.

The resident manager was called. He testified that when he got there both parties were yelling inappropriately at each other. He told the parties to settle down; told #7 that quiet enjoyment includes some daytime noise; and told both parties that if other issues should arise to call him. He did not receive any complaints from either party until Mother's Day this year.

The resident manager testified that on Mother's Day #7 and her son came to his unit. They told him that the tenant was threatening them. The tenant then arrived at his unit and there was a heated confrontation between the parties. Eventually, he got them to settle down and they left together.

The tenant's version of events is that he was in the backyard with the tenant of #8, who was talking on the telephone to her mother. #7 slammed her door. #8 knocked on the door of #7 to apologize. #7 opened the door and was verbally abusive to #8. The tenant says he lost his cool and said many insulting things to #7, who responded in kind. A few minutes later he could hear #7 screaming at the resident manager. He went to the resident manager's unit and told him #7's accusations were not true. He said the resident manager was upset with them both.

The tenant testified that on their way back to their respective units #7 told him she could have him killed in his sleep; she knew people who would do it.

#7's letter said that on Mother's Day there was a knock on her sliding glass door. When she opened the door the tenant was there yelling at her; calling her names including "crackhead"; and saying that she should move out. Her letter says she is a single woman who lives quietly with the fourteen year old autistic son. She goes on to say that the tenant has been partying loudly; bragging to his friends about hitting women, complete with demonstrations; and giving her dirty looks and mocking her.

#8 submitted a letter that gave a version of events similar to the tenant's. She also states that after #7 returned to her unit from the resident manager's she started singing threats against her and the tenant out of her window.

The final incident was on June 8. The tenant's version is that around 9:30 pm he was outside with the girl from #5, tow of her friends, the girl from #8, and her friend. He went inside to put his children to bed. When he came back out #5 was apologizing to #7 and #7 was being belligerent to #5. He went inside to call the resident manager and then changed his mind. They all went inside. The next day he was served with the notice to end tenancy.

The resident manager testified that he received a call from #7. She told him she did not feel safe in her home or outside, and something had to be done. He felt that these were serious allegations and that it was his responsibility to take some action. He did not know the truth of the situation so he served the tenant with the 1 Month Notice to End Tenancy for Cause to bring the issue to the Residential Tenancy Branch for determination. He did not talk to the neighbour's before serving the notice.

The notice was served on June 9, The reasons stated on the notice were:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; and/or jeopardize a legal right or interest of another occupant or the landlord.

The residents of #5, #8 and one other woman who was present on the evening of June 8 all submitted statements about the events that evening. They all confirm that #7 yelled at them at a time when the tenant was inside; they apologized to her but she continued to yell at them; and that the tenant did not threaten #7.

The residents of #4, #5, and #8 all submitted letters stating that the tenant was a good neighbour and they had not had any problems with him.

The tenant testified that #7 has been a noisy and inconsiderate neighbour but he has not complained about her. He testified that she is a drug user; is up all night and then complains about noise during the day; and when she is high she is aggressive, angry and belligerent.

The landlord's evidence is that he has no personal experience of #7 using drugs and suggested that some of her behaviours could be manifestations of illness. He did say that #7 is very vocal about things that she does not like, but sometimes she does have valid complaints about noise. He described #7 as having "a unique form of conflict resolution". He said she is very belligerent person who tried to provoke people into action worse and that her efforts may be successful with the tenant.

### Analysis

On an application like this the onus of proof is on the landlord to establish the grounds stated on the notice to end tenancy, on a balance of probabilities.

There is no evidence that the tenant engaged in any illegal activity.

The evidence basically boils down to #7 saying the tenant has threatened her and she feels unsafe and the tenant and the neighbours saying he did not. Often a person who feels they have been threatened by another person and that the threat is real will take some action with the police such as filing a complaint or applying for a peace bond. There is no evidence that #7 has taken any action beyond complaining to the landlord. There is no additional evidence to tip the balance of probabilities in the landlord's favour.

The tenant also testified that #7 threatened him but it does not appear that he took that threat seriously.

It appears from the evidence that the only neighbour the tenant disturbs is #7 and that #7 and the tenant each give the other as good as they get.

I find that although the tenant's behaviour towards #7 is not blameless the evidence does not meet the standard of establishing that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. Accordingly, the 1 Month Notice to End Tenancy for Cause dated June 9, 2016 is set aside and is of no force or effect.

### Conclusion

- a. For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated June 9, 2016 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.

- b. As the tenant was successful on his application he is entitled to reimbursement from the landlord of the \$100.00 he paid to file it. Pursuant to section 72(1) this amount may be deducted from the next rent payment due to the landlord.

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 28, 2016

---

Residential Tenancy Branch