



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TREATY DEVELOPMENTS/ROCKWELL PM  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, MNDC, O, FF

### Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated and received June 28, 2016 and for a monetary award for damages, claiming the landlord's building manager is always banging on his door.

This matter was adjourned from August 17, 2016 to permit service, or possible re-service of landlord documents on the tenant Mr. Y. Explicit instructions were given for the time and method of service. Mr. E.V. for the landlord says the tenant did not answer the door at the appointed time so he attached the documents to the door. The tenant says no one came to the door at the appointed time.

The hearing proceeded on the basis that the landlord's documents would be permitted to be adduced but that the tenant could request more time to respond to any particular document. As it happened, no further time was required.

The parties listed on the cover page attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Subject to what has been said in the preceding paragraph, documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant or a person permitted on the premises by him has significantly interfered with or unreasonably disturbed another occupant or the landlord or seriously jeopardized the health, safety or lawful right of another occupant or the landlord or that the 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?

Does the evidence show that the landlord has been unreasonably disturbing the tenants so as to justify an award of damages?

### Background and Evidence

The rental unit is a one bedroom apartment in an 18 unit apartment building.

The tenancy started in October 2010 according to the written tenancy agreement though the tenant Mr. Y. claims it started earlier. The current monthly rent is \$749.00, due on the first of each month, in advance. The landlord holds a \$350.00 security deposit.

The landlord's non-resident building manager Mr. V. testifies that the tenant Mr. Y. is rude, always leaves his cloth on the dryer literally "every week" since the start of the tenancy and that the tenant Ms. H. makes loud noise "everyday."

The tenant notes that he was unaware the clothes on the dryer were an issue. He denies the noise claim and says Mr. H. hasn't been there for a month (he does not know where she is but confirms that she was aware this hearing, scheduled for August 17).

Mr. V. relates a complaint from a tenant, Mr. P.G., who lives across the hall, that Mr. Y. had assaulted him by pushing him in a stairway.

The landlord submitted a signed statement from Mr. P.G., dated June 28, 2016, saying since he moved in December 2014, Ms. H. has displayed "erratic and abnormal" behaviour, for example, standing behind her door shouting and cursing at him and others in the building. He writes that the behaviour is very disruptive and that he's complained several times to the building management. He says the behaviour diminished since he wrote a letter to the landlord in March 2016.

Mr. P.G. writes that the tenant Mr. Y. became agitated when he learned of the complaint and in February, pounded on his door and insulted him.

Mr. P.G. writes that on June 26, 2016 he was assaulted by Mr. Y. by blocking his way down a stairwell and pushing him against a wall and then again, more forcefully. Mr. P.G. writes that he called the tenant a “moron” and asked what was wrong, to which Mr. Y. said not to push his girlfriend again. Mr. P.G. called the police. Apparently no charges have been laid.

The tenant Mr. Y. denies the pushing incident and claims that it was the other way around: that Mr. P.G. assaulted him, by pushing him from behind.

Mr. Y. adduces a letter signed by the tenant Ms. H. stating that Mr. P.G. had pushed her.

Mr. Y. denies pounding on Mr. P.G.’s door or that Ms. H. makes much noise.

Mr. Y. says that the building manager frequently pounds on his door.

In response, the landlord says that Mr. Y. generally appears hostile.

### Analysis

The ending of a tenancy is a very serious matter. The onus is on the landlord giving the Notice to End Tenancy to show that good grounds for it exist. While the evidentiary test is on a balance of probabilities, clear and cogent evidence is required to support an eviction.

In this case I find that landlord has not satisfied that burden.

In regard to claim that the tenant is somehow misusing the laundry facilities, there is no mention of it in any material filed by the landlord. At hearing the tenant was taken by surprise by the claim. As described, the behaviour if true is at best irritating. I am not persuaded that the tenants have ever been warned about it or that it was considered a serious matter. It cannot found an eviction notice.

In regard to the allegations of noise, I consider the testimony of Mr. V. to be exaggerated and unreliable. He stated that the laundry issue happened “every week.” Even despite a request for clarification about the frequency of the behaviour, he

persisted that the behaviour had occurred “every week” since the start of this tenancy almost six years ago. I think that very unlikely, given that the landlord is now claiming that the behaviour is grounds for ending the tenancy and given that Mr. V. says he’s only been there since last September.

Similarly, Mr. V. insisted the noise issue happened “every day”. Surely there would have been some record of a warning or advisory to the tenants about the noise Mr. P.G. says he’s been complaining about.

As well, Mr. V.’s evidence about noise was vague. In the face of the tenant Mr. Y.’s denial I find that the landlord has not proved this ground for eviction.

Regarding the allegation of physical assault, it should be said that a tenant shown to have assaulted another occupant or the landlord or the landlord’s employee will receive very little consideration at hearings of this nature. Such conduct will justify eviction.

In the present case, I am left to determine whether to accept the written statement of Mr. P.G. or the oral testimony of the tenant Mr. Y. Neither’s claims are corroborated in any regard. I do not consider one of the participants calling the police after the fact to be corroborative.

Mr. P.G. did not testify. He was therefore did not give sworn testimony nor was he exposed to the testing of questioning.

There is no apparent basis to prefer Mr. P.G.’s statement affirming an assault over the testimony of Mr. Y. denying the assault and so I find that the landlord has not satisfied the burden of proof regarding the claimed assault.

As a result, I find that the landlord has failed to prove grounds for the Notice and I hereby cancel it.

This decision is not be taken as a finding that the tenant Mr. Y. did not assault Mr. P.G.. Just that it has not been proved at this hearing.

In regard to the tenants’ claim for damages for door pounding by the landlord’s employee, there is no evidence to conclude when it happened who was disturbed and how loud the banging or “pounding” was. In the circumstances I dismiss the tenant’s claim for damages.

Conclusion

The tenants' application is allowed in part. The Notice to End Tenancy dated June 28, 2016 is hereby set aside.

There is no claim for recover of a filing fee.

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 26, 2016

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Residential Tenancy Branch