



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BELMONT PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

CNC

### Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated July 26, 2016.

The Notice claims that the tenant or someone permitted on the property by her has: significantly interfered with or unreasonably disturbed another occupant or the landlord, or has seriously jeopardized the health, safety or lawful right of another occupant or the landlord or has put the landlord's property at significant risk.

Proof of any of these claims forms a lawful ground for eviction under s. 47 of the *Residential Tenancy Act* (the "Act").

In the "DETAILS OF THE CAUSE" box in the government Notice form, the landlord has written "Numerous Noise + Harassment complaints involving police and multiple tenants."

The tenant has named Mr. E.T. as respondent. It is apparent that he is not the tenant's landlord. He was the building manager. He did not issue the Notice. The proper respondent landlord is the company B.P., which did issue the Notice and on whose behalf Ms. B.V. attended this hearing. I amend the style of cause accordingly.

Both the landlord and the tenant attended the hearing, the landlord by its representative, 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. Only documentary evidence that had been traded between the parties in accordance with the Rules of Procedure 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 any of the three grounds for eviction claimed in the Notice have been established?

### Background and Evidence

The rental unit is a one bedroom apartment on the fourth floor of a four story, 42 unit apartment building managed by B.P.

The tenancy started in January 2013. The current monthly rent is \$812.00, due on the first of each month, in advance. The landlord holds a \$387.50 security deposit.

Ms. B.V. for the landlord states that the tenant has significantly interfered with or unreasonably disturbed another tenant, Ms. P.W., by making numerous false or unwarranted complaints against her. Additionally, she states that the former building manager, whom, I understand, was living in the building, was significantly interfered with or unreasonably disturbed by the tenant's allegation that he tried to rape her.

Ms. B.V. states that the tenant has seriously jeopardized the health, safety or lawful right or interest of another occupant or the landlord by her claim about Mr. E.T., by other tenants complaining about being harassed by the tenant and because two tenants moved out because of this tenant.

Ms. B.C. states that the tenant has put the landlord's property at significant risk by causing a flood in the apartment below hers and by bringing the reputation of the apartment into disrepute by her false claims regarding prostitutes, drugs and naked men.

Const. B. testifies that the police have attended many times to this apartment building, especially this apartment. He offered the opinion that the essence of the disruptions emanated from broken relationships (namely between the tenant and Mr. K.C. who occupies the suite directly below hers) and from personality disputes.

He says that the tenant made a complaint of sexual assault against the building manager Mr. E.T. The complaint was investigated but there were no "reasonable grounds" for the police to pursue the matter. During the investigation Mr. E.T. admitted that he had put his arm around the tenant and tried to kiss her. Const. B. offered the opinion that the tenant acted maliciously.

He relates another complaint made by the tenant where she alleged that Mr. K.C. was on his balcony naked. He says the police attended but found no one home.

Const. B. related the dates the tenant has contacted the police in 2016 with complaints: April 2, January 26 and May 18. In 2015 he has a record of complaints to the police on December 6, July 9 and May 3.

On some of these occasions the police would find no cause for the complaint. On others they asked Mr. K.C. to turn down his music. On the May 3, 2015 occasion, Mr. K.C. was noted to be drunk.

Const. B. relates that the tenant is in the habit of coming to the police station to complain about Mr. K.C. in his apartment. She has been told to document her concerns but she has been

known to relay a single complaint to numerous officers. Const. B. thinks the tenant is trying to “shop” for the answer she wants to hear.

Const. B. also relates that someone has been pulling the fire alarm in the building. The number of times this has occurred is not clear. The constable says it is being done by persons unknown, but it is clear from the fact that he raises it at this hearing that he has his suspicions and they point to this tenant.

Ms. B.V. for the landlord says the alarm has been falsely pulled in the building five times. She agrees with the constable that neither knows who is doing it but she has her suspicions.

Ms. B.V. says that the building manager has been moved from this building because of the tenant’s claims. More than once during the hearing Ms. B.V. referred to the tenant claim that Mr. E.T. had tried to rape her. It was not clear where this allegation arose but it would seem that Ms. B.V. discovered the “attempted rape” claim as having been made by the applicant tenant to another tenant in the building. That other tenant related it in an unsigned, six page, typewritten document that Ms. B.V. attempted to adduce as evidence at this hearing in rebuttal to the tenant’s testimony.

The landlord filed that document with the Residential Tenancy Branch by fax on September 9, seven days before the first hearing of this matter. She says that it was hand delivered to the tenant. The tenant denies it.

The landlord “anonymized” the document before submitting it. All reference to the identification of the author has been redacted.

This evidence was refused at the hearing for various reasons.

First, anonymous evidence is not normally permitted in the dispute resolution process, whether at this level or in a court of law. It violates the fundamental principle that a person is entitled to know the identity of her accuser.

A landlord is entitled to protect the identity of a complainant. Indeed, this adjudicative body will, itself, seek to ensure “informer privilege” in appropriate circumstances. However, when matters proceed to the adjudicative stage; to a dispute resolution hearing, and where a complainant’s evidence is decisive evidence, there is no anonymity. The tenant is entitled to challenge the accusations forming the basis of the eviction notice. She is entitled to know the particulars of the accusations and the source of the accusations to fairly mount any challenge to them.

Equally, it should be noted that intimidation of a witness is a criminal offence.

In any event, the document is unsigned and it is more likely than not that the tenant did not receive the material. She has filed extensive rebuttal material to the landlord’s allegation(

though she did not adduce all of it during the hearing). She testified at length. Had the document in question been in her possession she would have referred to it during her testimony.

Ms. B.V. stated that between hearing dates she refiled the material in question with the names revealed. That material has not reached this file. The tenant does not have that material. It is well past the time for the landlord to file its documentary evidence in support of the Notice. I would have refused that material as well.

Ms. B.V. testifies that two tenants have moved because they were fearful and that the fire alarm has been pulled five times by persons unknown.

Ms. B.V. wished to adduce evidence regarding events occurring after the Notice had been served, particularly the fact that someone, unknown, had crumpled and lit on fire paper notices that had been attached to a doors on lower floors in the apartment building. As noted at hearing, evidence of incidents occurring after the date of the Notice cannot serve as retroactive justification for the Notice. A Notice to End Tenancy for cause must stand or fall on the known circumstances as they existed as of the date of the Notice.

Ms. B.V. referred to a typewritten statement from an anonymous person (the name had been redacted by the landlord) opining that the tenant, Mr. K.C. and another tenant should all be evicted and that the building manager Mr. E.T. had crossed the line and wasn't doing his job. Lacking any indication of the authorship for this document, or any signature attesting to its contents, I deemed it of no value during the hearing.

Ms. B.V. shows that in November 2014 the tenant received a warning letter about noise and disturbance after 1:00 o'clock a.m. on a Monday.

In February 2016 the tenant sent Mr. E.T. a note complaining about a "loud deep vibrating buzzing sound" in the walls of her bathroom coming from Ms. P.W.'s bathroom fan in the suite next door. Mr. E.T. for the landlord attended and determined that the noise was minor and not an inconvenience for the tenant. The landlord also contacted Ms. P.W. and was told she does not run the bathroom fan for long periods of time.

By letter dated February 17, 2016 the tenant was warned that she had "significantly interfered with and unreasonable disturbed" Ms. P.W. by making the fan noise complaint and that she must cease and desist or face eviction.

It would appear that the tenant Ms. P.W. is or was amorously connected to Mr. K.C.

On July 16, 2016 Ms. B.V. authored an incident report resulting from a complaint on July 15 by the tenant that Mr. K.C. was playing loud music and dancing naked on his balcony. The police attended. "All parties" were "talked to" and no police or landlord action was taken.

Ms. B.V. presented an incident report from the same day resulting from a complaint by Mr. K.C. that the tenant's washing machine was leaking water into his kitchen. The landlord had Mr. R.L. (who attended this hearing and is the new building manager) along with a plumber attend the tenant's suite. They found no evidence that water was leaking from the rental unit into Mr. K.C.'s below, though the tenant was asked to stop using her washing machine pending further investigation.

Ms. B.V. presented an incident report resulting from a complaint by the tenant on July 16, 2016 that there was loud music from Mr. K.C.'s apartment below and that he was pounding on the door and dancing naked on his deck. Ms. B.V. attended and noted that when she arrived there was no noise heard from the ground, nor the second or third floors.

On July 18, 2016, the tenant wrote to the landlord (directed to Mr. E.T.) complaining about Mr. K.C., alleging: he was disturbing her with his excessive drinking, drugging and use of prostitutes, his loud yelling, foul obscenities and the insults he utters at her from his balcony as well as his repeated pounding on her door despite being told not to by the police.

On July 22, Ms. B.V. wrote to the tenant warning her about the numerous complaints going back and forth between another tenant (Mr. K.C. was not named) and her and warning her about the noise restriction rules between 10:00 p.m. and 9:00 a.m.

The tenant testifies that she a "quiet and respectful" tenant of "four" years and that she is being bullied. She says a group in the building, including Mr. E.T., are conspiring against her to have her evicted. She says that none of her complaints were harassing or out of line and that there were no complaints until about four months ago.

She says she had had an affair with Mr. K.C. that ended about seven months ago and that he had been bothering her since, by knocking on her door, playing loud music late at night and sending her texts. She says she has changed her phone number twice but Mr. K.C. has discovered it. She thinks Mr. E.T. or another tenant revealed to him.

She denies having anything to do with a flood in Mr. K.C.'s apartment and says that Ms. B.V. never contacted her in any way about it.

The tenant presents documentary evidence to indicate that at least two other tenants in building were having problems with Mr. K.C. She presents a signed statement to the landlord, that she requested from the homeowners living next door to the apartment building expressing their dismay about a "crack head" living in a lower unit of the building facing their side yard and a tenant "who lives on your 3<sup>rd</sup> floor corner unit" who plays loud music, "screams/sings at the top of his lungs" and aggressively approached their daughter while she was sitting in a car.

The tenant says the person in the corner unit on the third floor is Mr. K.C.

The tenant submits a signed statement from her brother and his girl friend about an incident after the date of the Notice when the tenant Ms. P.W. displayed verbal and physical aggression toward the tenant.

The tenant submits a signed statement from her mother regarding a threatening phone call to the tenant from Mr. K.C. after the date of the Notice. Mr. K.C. told her that she should have the tenant "committed."

The tenant submits a signed statement from Mr. B.C., another tenant in the building, who was at her suite on the day of the flooding incident. He states that on that day Mr. K.C. was banging on her door yelling that she'd flooded his apartment. The tenant refused him entry and called the police.

### Analysis

The ending of a tenancy is a serious matter. While the evidentiary test is on "a balance of probabilities" persuasive and cogent evidence will be expected of a landlord in establishing good grounds for the Notice.

In this case, the evidence presented during the hearing does not establish that the landlord has the necessary grounds to evict the tenant under any of the three claims.

One could think that if anyone in the apartment building had been unreasonably disturbed or significantly interfered with it would be Mr. K.C. He did not give evidence, either by statement or testimony. The landlord disclosed that he has been given a Notice to End Tenancy as well, and has disputed it, with a hearing approaching in October.

The landlord's position, stated at hearing, is that in regard to the claim that other occupants or the landlord have been significantly interfered with or unreasonably disturbed, they are the tenant Ms. P.W. and the former building manager Mr. E.T.

Neither Ms. P.W. nor Mr. E.T. gave evidence. Section 47 of the *Act* does not allow a landlord to evict a tenant for conduct that has "likely" significantly interfered with or unreasonably disturbed another occupant or the landlord, it requires that it be shown that another occupant or the landlord were, in fact, significantly interfered with or unreasonably disturbed. An arbitrator may not determine, except perhaps in extraordinary circumstances, that a tenant's conduct "must have" or "would be likely to" disturbed another occupant or the landlord. Direct evidence of that allegation will be required.

It has not been shown that either Mr. P.W. or Mr. E.T. were significantly interfered with or unreasonably disturbed.

There is no evidence of “numerous complaints” from the tenant about Ms. P.W., or, if in fact there were numerous complaints, that Ms. P.W. knew of them or was disturbed by them. That essential evidence is lacking.

Regarding the one known complaint, it may well be that the tenant was disturbed by the fan in Ms. P.W.’s apartment and it may well be that the landlord reasonably determined that it was not an unreasonable disturbance. The evidence does not warrant a finding of malicious or false conduct by the tenant. There can be no eviction in these circumstances.

Regarding Mr. E.T., he did not give evidence though still in the employ of the landlord. He would give the best evidence about why he moved. It has not been shown that Mr. E.T. moved because of this tenant’s misdeed. In fact he has admitted to have made an unwanted physical “pass” at the tenant. It does not cast the tenant in a very good light that she may have pocketed this incident and pulled it out for her use long after, but the incident did occur. If the landlord thinks it best to move Mr. E.T to another building as a result, then that is a decision for the landlord.

This ground for the Notice must fail.

Regarding the claim in the Notice that the tenant had seriously jeopardized the health, safety or lawful right or another occupant or the landlord Ms. B.V. states that it is because Mr. E.T. has had to move due to the tenant’s allegations, other tenants have complained about harassment and two tenants have moved.

The matter involving Mr. E.T. has already been commented upon.

There is a particular lack of evidence of complaints from other tenants about this tenant, regarding harassment or anything else. The landlord has not proved this aspect of the claim.

There is no evidence that tenants have moved away from this building because of this tenant, but for the statement of Ms. B.V. She has not indicted what tenants moved or when or upon what basis she concludes that they moved because of this tenant. The landlord has not proved this claim.

In summary, there is insufficient evidence to conclude that the health, safety or lawful right of another occupant or the landlord has been seriously jeopardized.

This ground for the Notice must fail.

Lastly, the landlord’s Notice claims that the tenant has put the landlord’s property at significant risk by the flooding of Mr. K.C.’s apartment and denigrating the reputation of the apartment building

The suggestion that the tenant caused the flooding in Mr. K.C.'s apartment was investigated and disproved by the landlord at the time of the occurrence.

The reference to prostitutes, drugs and naked men in the apartment building was a specific reference to the conduct of Mr. K.C. in a letter from the tenant to the landlord. The landlord has reached the conclusion that the tenant's claim was not true. It may be that the conduct had ceased by the time the landlord got there. However, that does not prove that the conduct did not occur. Even if it were not true and the tenant made it malice, it was not a public utterance and would have no effect on the reputation of the apartment building.

This ground for the Notice must fail.

### Conclusion

The tenant's application is allowed. The Notice to End Tenancy dated July 26, 2016 is hereby cancelled.

It must be noted to the parties that this decision is not a "not guilty" decision. It is a "not proved" decision. There is much in this evidence that leads to a suspicion that the tenant has not been conducting herself properly. The evidence of Const. B. was particularly scathing of the tenant and the general goings on at this apartment building involving the tenant. However, there is no provision in the *Act* for evicting a tenant for significantly interfering with or unreasonably disturbing a policeman.

As well, the landlord was denied the opportunity to rely on conduct that occurred after this Notice was given. If conduct has occurred since the date of this Notice that in the landlord's view warrants eviction, the landlord is free to serve another Notice.

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: September 25, 2016

---

Residential Tenancy Branch