



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PARKDALE ENTERPRISES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC,

### Introduction

On January 19, 2017, the Tenant submitted an Application for Dispute Resolution asking to cancel a 1 Month Notice to End Tenancy for Cause. On February 8, 2017, the Tenant submitted an amendment to the application to include another 1 Month Notice to End Tenancy.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. The parties testified that they exchanged the evidence that I have before me.

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.

### Issues to be Decided

- Does the Landlord have cause to end the tenancy?
- Should the 1 Month Notices be cancelled?

### Background and Evidence

Both parties testified that the tenancy commenced on January 1, 2015, and is currently a month to month tenancy. Rent in the amount of \$480.00 is due on the first day of each month. The Landlord provided a copy of the tenancy agreement.

The Landlord G.C. testified that he has received numerous complaints from other occupants of the rental property that the Tenant is dealing drugs and is disturbing the other occupants.

The Landlord G.C. testified that the numerous complaints from the other occupants were made verbally. The Landlord testified that he followed up on these complaints by speaking to the Tenant. He submitted that he asked the Tenant to keep the peace and be quiet.

The Landlord submitted that on May 19, 2016, he issued a caution notice to the Tenant regarding the Tenant's guests disturbing other occupants. The Landlord provided a copy of the caution Notice. The Notice asks the Tenant to keep his guests from disturbing the Tenant below him, and to respect the right of quiet enjoyment of the other Tenants after hours.

The Landlord submitted that the Tenant threatened another occupant of the rental property. The Landlord provided a statement from the occupant that states the Tenant threatened to break his legs and stated he is dead. The statement indicates that the occupant has been disturbed by noise caused by the Tenant and activity of people yelling up to the Tenant's window.

The Landlord issued two 1 Month Notices to End Tenancy For Cause as follows:

- 1 Month Notice to End Tenancy for Cause dated January 16, 2017
- 1 Month Notice to End Tenancy for Cause dated January 20, 2017

The Reasons within the two notices for ending the tenancy are almost identical. The reasons within the 1 Month Notice dated January 20, 2016, are:

Tenant has allowed an unreasonable number of occupants in the unit /site.

Tenant or a person permitted on the property by the Tenant has:

- 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.

Tenant has engaged in illegal activity that has, or is likely to:

- Damage the Landlord's property.
- Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord.
- Jeopardize a lawful right or interest of another occupant or the Landlord.

In response, the Tenant testified that the intercom on the front of the building connects to a box in the lobby and does not connect into the rental suites in the building. The Tenant testified that he does not have a phone and that his visitors often yell up to his window to get his attention.

The Tenant testified that following the conversations with the Landlord about the yelling, he asked his visitors to stop yelling up to him. He testified that his visitors now use a laser pointer that they point at his window to get his attention.

The Tenant testified that he works at a clothing store and to be helpful to others, he provides clothing to people who need it. He testified that he also assists friends by holding onto their money and he portions it out on day by day basis so that they do not spent it all at once.

The Tenant acknowledged that the Landlord had 3 or 4 conversations with him regarding selling drugs and the yelling that is disturbing other occupants. The Tenant testified that the first conversation occurred approximately 1 year ago. He testified that he spoke to his friends and asked them to stop calling up, but some people don't understand and continue to yell up.

The Tenant testified that the occupant who provided the statement that the Tenant threatened him, actually threatened the Tenant with bodily harm and assault. The Tenant provided a statement that is purportedly signed by two witness who live at the rental property.

The Tenant provided a witness D.S. who testified that the Tenant gives him, and others clothing. He testified that people use another way to contact the Tenant from the street.

In response, the Landlord confirmed that the intercom does not connect to the rental suites. The Landlord testified that they looked into having the intercom connect to the rental units but the cost is too high.

The Landlord G.C. stated that the Tenant has been open about drug dealing and that this activity compromises the safety of other occupants. The Landlord testified that the Tenant has too many visitors up in his unit. The Landlord cross examined the Tenant on some of the Tenant's documentary evidence. The Landlord never directly asked the Tenant if he is dealing drugs on the property.

### Analysis

Based on the evidence and testimony before me, and on a balance of probabilities, I make the following findings:

The Landlord's 1 Month Notice indicates the Tenant has allowed an unreasonable number of occupants in the unit. The Landlord clarified that the Tenant has too many guests. I find that the Tenant is allowed to have guests, and that guests are not occupants. There is no evidence before me that the Tenant has allowed other occupants to move into the rental unit. I find that the Tenant has not allowed an unreasonable number of occupants.

With respect to illegal activity, Residential Tenancy Policy Guideline # 32 Illegal Activities provides the following guidance:

*The party alleging illegal activity has the burden of proving that the activity was illegal. Thus the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.*

In the matter before me, the Landlord has the onus of proof to prove that the reasons in the Notice are valid. The Landlord testified that he received numerous complaints but they were all verbal. Other than making a suggestion that the Tenant is dealing drugs, the Landlord did not provide any relevant statute or law and did not provide any other testimony or documentary evidence to support that the Tenant has engaged in illegal activity that has or is likely to:

- Damage the Landlord's property
- Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord
- Jeopardize a lawful right or interest of another occupant or the Landlord

The Landlord provided a written statement from an occupant that the Tenant threatened him; however, the Tenant provided a statement that the occupant had threatened the Tenant. When parties provide equally believable but opposing testimony or evidence, the burden of proof rests with the Applicant. I find that the Landlord has not provided sufficient evidence to support the allegation that the Tenant has engaged in illegal activity.

The Landlord has not provided sufficient evidence for me to find that the Tenant; has engaged in illegal activity causing damage, adversely affected the quiet enjoyment, safety or well-being of another occupant; or jeopardized the lawful right of another occupant or the Landlord.

With respect to the remaining reasons within the 1 Month Notice, I accept the testimony and evidence from the Landlord and Tenant that people try to contact the Tenant by yelling up to him from across the street. I accept that the yelling up to the Tenant has disturbed the occupant below the Tenant.

Other than the Landlord's written statement that the Tenant has an inordinate number of guests coming and going at all hours of the day and night, there was no testimony or documentary evidence provided to establish the number of disturbances and the time of day of the disturbances.

I find that there is no established method for the Tenant's visitors to announce their presence at the rental property in order for the Tenant to decide whether or not to grant access. The intercom does not connect to the rental suites.

I accept the testimony from the Tenant that he has taken steps to minimize the problem by speaking to friends and acquaintances and asking them to not yell up to his window. The Tenant testified that he has asked his guests to use a laser pointer to get his attention in order to minimize any disturbances.

In addition, while I find that the Tenant is responsible for the actions of a person permitted on the property by the Tenant, the Tenant has not granted permission to be on the property, to individuals that are calling up to his window from across the street. I don't find that the Tenant is encouraging visitors to yell up.

After considering the circumstances that visitors have no means to make contact with the Tenant from the front door of the rental property, and the Tenant's reasonable efforts to lessen or minimize the problem, I do not find the Tenant, or a person permitted on the property by the Tenant, has unreasonably disturbed or significantly interfered with another occupant or the Landlord.

In addition, I find that there is insufficient evidence from the Landlord that the Tenant has

- Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.
- Put the Landlord's property at significant risk.

I therefore cancel the 1 Month Notice to End Tenancy for Cause, dated January 16, 2017, and I cancel the 1 Month Notice Notice to End Tenancy for Cause, dated January 20, 2017.

I order the tenancy to continue until ended in accordance with the Act.

Conclusion

The Tenant's application is successful. The 1 Month Notices issued by the Landlord dated January 16, 2017, and January 20, 2017, are cancelled.

The tenancy will continue until ended 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: February 17, 2017

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Residential Tenancy Branch