



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            CNC

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the one month Notice to End Tenancy dated January 20, 2017

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was served on the Tenant by posting on January 20, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on February 6, 2017. With respect to each of the applicant's claims I find as follows:

I denied the landlord's request dismiss the tenant's application for the failure to serve within 3 days. The tenant testified he is dyslexic and thought the Branch would serve the materials. The Advocate immediately provided the landlord with the materials upon becoming aware of the problem. I determined it was appropriate to grant an extension of time to serve the Application for Dispute Resolution.

### Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated January 20, 2017?

### Background and Evidence

The tenancy began on July 1, 2014. The tenancy agreement provided that the tenant(s) would pay rent of \$375 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$187.50 prior to the start of the tenancy.

I advised the parties that I am being asked to determine whether there was sufficient grounds to end the tenancy as of the date of the Notice to End Tenancy (January 20, 2017). Thus

evidence relating to conduct up to and including that date was relevant. Evidence of conduct after that date is not relevant.

The landlord seeks to end the tenancy based on the following evidence:

Landlord Witness #1:

- He has been woken up at about 2:00 a.m. by screams from the guest that was visiting the tenant.
- The screaming occurred in the morning on January 18 and 19.
- The tenant is fine by himself.
- On cross-examination he acknowledged the rental property lacks sound proofing.
- He is aware that the guest of the tenant has relocated to a new property.

Landlord Witness #2

- The tenant creates problems when he is drunk. He opens doors of other tenants and refuses to leave when asked.
- The tenant is threatening and abusive when drunk
- He has harassed other occupants for the last 2 years.
- On cross-examination he acknowledged he is the brother of Landlord Witness #3 (the building manager)
- He has not connection with the family of the landlord except that he is a tenant of the landlord.
- The problems the tenant causes is when he barges into other people's room and stick his foot in the door preventing the door from being closed.

Landlord's Witness #3:

- He is the building manager.
- The tenant has constantly bothered other residents especially when drunk.
- The tenant is abusive to other residents including name-calling.
- On January 19 he checked into a noise issue in the tenant's room. He pushed the door open with his finger. The tenant became abusive. He followed me back to my room and punched me in the back of the head.
- On cross-examination he denied that the tenant was trying to stop him from harassing the tenant's guest.
- He previously had a personal relationship with the tenant's guest and at one time left a love note for her.
- He had a firearm that was given to him by his father that was removed by the police.
- The police have been called a couple of times.

Landlord:

- He has received complaints from other residents relating to the conduct of the tenant primarily when the tenant is intoxicated.

- The tenant's guest was previously a tenant in the rental unit. She was given an eviction notice for non-payment of rent.

Tenant's Witness #1

- She moved into the rental property on December 2, 2016.
- She was previously hospitalized for pneumonia. She suffers from panic attacks.
- The tenant is a quiet person. He does not have a T.V., radio or phone.
- The tenant was protecting her from harassment from the building manager after she broke off her relationship with him. She is afraid of the building manager who has sexually or verbally harassed her.
- She relocated last week because of fears for her safety.
- The walls are thin and you can hear quiet noises from the adjoining room.

Tenant:

The tenant gave the following evidence:

- On January 19 the building manager barged into his room.
- He was outraged that the building manager illegally entered his room
- He denied assaulting the landlord.
- The walls are paper thin without insulation.
- He has not received complaints from the landlord about disturbing other residents.
- The building manager was abusive and harassing his guest.

Analysis:

The landlord has the burden of proof to establish sufficient cause to end the tenancy on a balance of probabilities.

The Notice to End Tenancy identifies the following grounds:

- 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

After carefully considering all of the evidence I determined the landlord failed to establish sufficient cause to end the tenancy based on the evidence presented.

There is insufficient proof that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord for the time period leading up to the January 19, 2017. The tenant denied that he has significantly interfered with or unreasonably disturbed others. The witnesses of the landlord failed to provide specifics as to when and how the disturbances occurred. The landlord failed to provide any written warning notices to the tenant that would confirm the oral evidence of the landlord's witnesses.

The incident that occurred on January 19, 2017 is problematic. There is no justification for a tenant assaulting a landlord. However, in my view the landlord failed to prove the assault took place. The tenant denies the testimony of Witness #3. The landlord was unable to present corroborating evidence. The tenant has not been charged criminally. There are tensions between the building manager and the tenant and his guests. This creates a problem in assessing the credibility of witnesses.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. As a result I order that the Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

**This decision is final and binding on the parties.**

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 24, 2017

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Residential Tenancy Branch