



# 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 July 27, 2017 and setting the end of tenancy for August 31, 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 July 27, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was sufficiently served on the landlord.

### Issues to be Decided:

The issue to be decided is whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated July 27, 2017.

### Background and Evidence:

The tenancy began on July 1, 2011. The tenancy agreement provided that the tenant(s) would pay rent of \$550 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$275 on June 30, 2011. The present rent is \$565 per month payable in advance on the first day of each month. .

### Grounds for Termination:

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
  - ...
- 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

The landlord gave the following testimony:

- On May 11, 2017 two males were seen banging on the tenant's door. They said he was a thief and was going to pay. The landlord told them to leave she would call the police.
- On May 17, 2017 the tenant disturbed others at around 11:00 p.m. by carrying household items up the stairs to his apartment. He responded accusing the landlord of harassing him.
- On May 27, 2017 two men behind the building were behaving in a loud and aggressive manner. They told me they were here to break some windows and went to the tenant's residence accusing him of being a thief. They broke both kitchen windows. The RCMP were called.
- On June 20, 2017 at around 7:28 a.m. another tenant phoned saying there was yelling, screaming and what sound like a fight at the tenant's apartment. The RCMP and ambulance were called.
- On June 21, 2017 a neighboring tenant phone saying someone had just thrown a chair at the tenant's living room window and breaking it. That person ran away. The tenant came out and started throwing articles off the balcony. The RCMP responded.
- The landlord gave the tenant a caution letter dated May 27, 2017 and a warning letter dated August 9, 2017.
- The rental complex contains eight two story buildings and 132 suites. The tenant lives on the second floor of one of the buildings., The representative of the landlord lives on the bottom floor of the same building.
- There are at least 5 elderly tenants in this building who do not feel safe and secure. The major problem appears to be the people the tenant associates with.

The witness for the landlord testified as follows:

- She feels apprehensive testifying and fears reprisals.
- She lives 2 doors down and there are often people banging on the tenant's door at all hours of the day and night.
- The police have been called multiple times.
- She witnessed the breaking of one of the windows and overheard the perpetrator accuse the tenant of not having a right to rip people off.
- She has seen computers, bikes, microwaves being taken to the tenant's rental unit.
- She is fearful for her three grandchildren.

The tenant gave the following testimony.

- He has just returned from a substance abuse detox treatment center and is hopeful of continuing the treatment.
- He denies that he owes people money and testified he does not know who broke the windows.
- The neighboring tenant caused most of the disturbances and he has been evicted and is no longer in the rental property as of the end of August.
- He blames the landlord of harassing him.

Analysis:

I determined there is no basis for the tenant's allegation that the landlord is harassing him. She has an obligation to all tenants in the rental property and there is no evidence of harassment.

However, I determined after carefully considering all of the evidence that the landlord has failed to establish sufficient cause to end the tenancy for the following reasons:

- The Act makes the tenant responsible for his own actions and those persons he has permitted on the property. The windows were broken by third party. That person has not been identified. The tenant did not permit that person onto the rental property. The tenant denies knowing who the perpetrator is. The landlord failed to present sufficient evidence to establish that the tenant allowed that person on the property. The evidence indicates that he was not prepared to let the person in.
- Further, even if the tenant had allowed that person into the property in the past this is not sufficient to prove that he is allowing that person onto the property now.

- The neighbor was evicted and is no longer living in the property. There is insufficient evidence to establish that the noise complaints were caused by the tenant rather than the neighbor.
- There is insufficient evidence to prove the tenant has been engaging in an illegal activity.
- While the tenant was responsible for the noise complaint on May 17, 2017 carrying household items up the stairs late at night I determined this does not amount to significantly interfering with or unreasonably disturbing. Similarly, the throwing of articles at the person who broke his window shows bad judgment but this is not sufficient to end the tenancy.

Determination and Orders:

As a result I determined that the landlord has failed to establish sufficient cause to end the tenancy. As a result I ordered that the one month Notice to End Tenancy dated July 27, 2017 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: September 13, 2017

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Residential Tenancy Branch