



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PETER SCHOLS HOLDINGS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

The tenant applies to cancel a one month Notice to End Tenancy for cause received August 28, 2017. The Notice alleges that the tenant or someone permitted on the premises by him has: a) significantly interfered with or unreasonably disturbed another occupant or the landlord or, b) has seriously jeopardized the health or safety or lawful right of another occupant or, c) 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.

Proof of any of these three grounds entitles a landlord to end a tenancy under s. 47 of the *Residential Tenancy Act*.

This matter was adjourned from October 13, 2017.

Both parties attended the hearing, the landlord by its representatives, 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 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 there are good grounds for ending the tenancy under any of the three grounds given in the Notice?

### Background and Evidence

The rental unit is a two bedroom apartment in a seventeen unit, three floor apartment building.

The tenancy started in 2005. There is a written tenancy agreement but neither side submitted one. The current monthly rent is \$1490.00. The landlord holds a \$500.00 security deposit.

Ms. S. C.-G. for the landlord testifies that at 5:30 a.m. on August 14, 2017, un-named neighbours of the tenant were awoken by a loud banging on their door. She says it was the tenant's son at the door and that he was belligerent, inebriated and naked. The neighbours called the resident manager Mr. S.H. who arrived to find the man belligerent and heavily intoxicated. Ms. S. C.-G. says the neighbours were afraid to provide a statement or report the matter to the police as they feared retribution from the son.

The tenant testifies that he is eighty nine years old. His son is sixty and has been staying with him. His son is physically disabled and is confined to a wheelchair. He says his son wears shorts and his stomach overlaps his lap when he is in his wheelchair, so that the shorts are not readily visible thus giving the appearance of nakedness.

Mr. D.S. read out the sworn affidavit of Mr. J.W.C., the tenant's son. The affidavit says that the son went out to cool off on the very hot morning of August 14. It states that the son wears shorts not readily visible due to his girth. It states the son is on medication for a sleep disorder and anxiety and did not have his teeth in. When the son was outside he "felt bad" and went to the nearest suite to ask them to make an emergency call because he thought he was having a heart attack and that is the incident the neighbours reported.

### Analysis

The ending of a tenancy is a very serious matter. While the standard of proof is on a balance of probabilities, clear and cogent evidence will be required to establish cause.

The tenant's version of events would be a good answer to all three of the grounds in the Notice.

On the competing evidence: the son's affidavit against the neighbours' third hand evidence, relayed through the resident manager and then through Ms. S. C.-G., it is not possible for me to determine that either version of events is more likely than the other.

For that reason, as the burden of proof first lies with the landlord in this matter, I find that the landlord has not established the grounds alleged in the Notice.

It should be noted that often a landlord will quite properly refrain from releasing the identity of a complainant. However when the dispute reaches the level of adjudication, whether at this level or in a court, privacy considerations must give way to justice. It is not a part of our justice system except in the most rare case and with prior approval, that a party be called on to defend himself against the evidence of unnamed persons.

### Conclusion

The Notice to End Tenancy dated August 28, 2017 is hereby cancelled.

As the tenant has been successful, I authorize him to recover the \$100.00 filing fee for this application by reducing his next rent by \$100.00 in full satisfaction of the fee.

This decision was rendered orally after hearing and 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: October 29, 2017

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Residential Tenancy Branch