



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes          CNC, MT

### Introduction

This hearing was convened in response to an application made August 16, 2017 by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for more time to apply to cancel a notice to end tenancy - Section 66; and
2. An Order cancelling a notice to end tenancy - Section 47.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Witness provided evidence under oath.

### Issue(s) to be Decided

Are there exceptional circumstances that allow the Tenant an extension of time to make its application?

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

### Background and Evidence

The tenancy of a unit in a four plex started in 2006 and the current Landlord took over the property in 2012. Rent of \$570.20 is payable on the first day of each month. On July 27, 2017 the Landlord served the Tenant in person with a one month notice to end the tenancy for cause (the “Notice”). The reason stated on the Notice is that the tenant or a person permitted on the property by the tenant 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.

The Tenant provides a letter from a service agency indicating that on July 27, 2017 the Tenant attended their office for assistance with disputing the Notice and that the agency, in error, faxed the Tenant's application to the Residential Tenancy Branch (the "RTB") instead of the correct method of making the application online or submitting it in person to the RTB. The agency did not discover until August 16, 2017 that the Tenant's application had not been filed as required by the RTB.

The Landlord submits as documentary evidence one letter from a previous tenant dated 2015, an undated letter from the Witness, and two notes dated July 13 and 17, 2017 from another previous tenant. The Landlord states that he has no direct evidence of disturbance by the Tenant but does have evidence of complaints made to the Landlord by other tenants.

The Landlord states that the tenant who wrote the 2015 letter moved out in July 2016 because of dealings with the Tenant. The Landlord provides no supporting evidence of the reasons for the end of this tenancy and states that this tenant only told the Landlord that she felt she was walking on eggshells and was always concerned about fights or arguments.

The Landlord states that the tenant who wrote the notes in July 2017 was asked to attend as a witness at these proceedings but refused. The Landlord states that the one note from this previous tenant indicates that the tenancy was ended due to conflict with the Tenant. The Landlord states that this tenant complained about 5 times in the 6 months prior to his move-out about the Tenant but that the Landlord did not make any notes or maintain a log of these complaints. The Landlord states that the complaints were mostly about verbal arguments with the Tenant inviting this tenant outside to fight. The Landlord states that this tenant found those arguments and invitations to be aggressive and threatening behavior. The Landlord states that he spoke with the Tenant several times about the complaints and that the Tenant denied the complainants versions and had his own. The Landlord states that he accepted that there were always two sides to a story but that the matters seem to have escalated recently to the point of seeking criminal charges. The Landlord states that he has lost two tenants over their concerns with the Tenant. The Landlord states that there have been no complaints by the other Tenants.

The Witness states that on the evening of July 17, 2017 the Tenant was seen coming home with his daughter and parking his boat. The Witness states that the Tenant was then heard shouting

insults at a neighbour. The Witness states that it looked like a fight was about to break out so the Witness approached to observe. The Witness states that after telling the Tenant that he was being insulting the Tenant charged the Witness while saying "You are dead". The Witness states that he then left and asked another neighbour to call the police. The Witness states that the Tenant then came and started hitting the Witness a few times. The Witness states that he then went home and that he spoke to the police when they arrived. The Witness states no charges were laid due to insufficient evidence and that the incident was "ruled a boat parking incident". The Witness states that he experienced one previous altercation with the Tenant "a number of years ago". Under questioning from the Advocate, the Witness agreed that prior to the Tenant charging him he had grabbed the daughter, noted to be 11 years old, by the shoulders and she was fighting to get away. The Witness states that he did this out of concern for the child's safety.

The Tenant states that while he was parking his boat the neighbour told the Tenant to park somewhere else, then approached the Tenant, called him a moron and stuck his face in the Tenant's face. The Tenant states that his daughter was scared and crying when the Witness put his hands on his daughter. The Tenant states that both the neighbour and the Witness were drunk at the time of the incident as the smell of alcohol was strong and they were slurring their words. The Tenant states that no charges were ever laid and that since this incident there has been no further dealings with either the neighbour or the Witness.

The Tenant argues that the one tenant who wrote the July 2017 notes moved out because he was a hoarder and the village had ordered him to clean up his unit and the yard. The Tenant states that things were so bad that he could not get up the stairs to his unit. The Tenant's Advocate indicated that he sits on the village council and knows the details of this hoarder however as the Advocate was not identified in advance of the hearing as a Witness I declined to take any further evidence on the actions of the village. The Landlord states that he is aware that the village wanted this tenant to clean up and states that this tenant did move out within a month after cleaning up.

### Analysis

Section 47(1) provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia, the tenant or a person permitted on the residential property by the tenant has

significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, or seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. Where a notice to end tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid.

I do not consider the evidence from 2015 to be relevant to the reasons for the Notice as this was some time ago and had it been significant at the time I would reasonably expect a landlord to act then. As this tenant did not provide any written evidence of reasons for ending the tenancy, did not attend to provide oral evidence and since the Landlord did not act to evict the Tenant after receiving the 2015 letter or before this tenant ended the tenancy, I find that the 2015 letter carries very little persuasion or weight.

Given the undisputed evidence of hoarding by the tenant who wrote the July 2017 notes, the undisputed evidence of intervention by the village, and the undisputed evidence of an inability to access stairs by the Tenant I find that any disputes between this tenant and the Tenant were likely due to the state of the areas in and around the building caused by this tenant. Further this tenant did not appear to provide evidence at the hearing. As a result I do not consider this tenant's reason to end the tenancy to be credible.

Given the undisputed evidence that the Witness, an adult male during the incident in July 2017, physically restrained a distraught and crying 11 year old girl in front of her parent, I find that the Tenant was likely provoked into charging the Witness. If anyone should have been evicted over this incident I consider the Witness to be a culpable person. I do not find the Witness evidence of further unprovoked assaults by the Tenant to be credible given the Witness behavior toward the Tenant's daughter and the undisputed evidence of the Witness and neighbour being drunk at the time. I also consider the determination that the evidence of the Witness and the neighbour was insufficient for charges against the Tenant.

Given the long term nature of the tenancy and without evidence of any other significant incidents I do not consider that the Landlord has sufficiently substantiated that the Tenant caused an unreasonable disturbance, significant interference or any serious jeopardy to any

other occupants or the Landlord. I find therefore that the Notice is not valid for the stated reasons and that the Tenant is entitled to its cancellation. The tenancy continues.

Conclusion

The Notice is cancelled and of no effect.

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: November 09, 2017

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Residential Tenancy Branch