



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AQUILINI PROPERTIES LP  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

O (CNC)

### **Introduction**

This hearing dealt with an application by the tenant to cancel a One Month Notice to End Tenancy For Cause (the Notice or Notice to End), dated August 18, 2017, with an effective date of September 30, 2017.

Both parties attended the hearing. They respectively acknowledged exchange of all document evidence further submitted to me and that they had satisfactorily reviewed it. The parties were given opportunity to mutually resolve their dispute to no avail. Both parties were given opportunity to present relevant evidence and testimony in respect to the application and to fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

### **Issue(s) to be Decided**

Is the notice to end tenancy valid?

Is there *sufficient* cause to end the tenancy?

### **Background and Evidence**

The tenant submitted a copy of the Notice to End. The Notice was issued for the following reasons pursuant to Section 47(1)(d)&(e) of the Act;

*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.

and

*Tenant or a person permitted on the property by the tenant 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.*

The tenant disputes the validity of Notice to End.

The relevant disputed evidence of the landlord claims the tenant engaged in throwing water balloons from their 5<sup>th</sup> story balcony on or about August 8 -10, 2017 which struck or nearly struck occupants of the residential property as they exited the building.

The attending landlord testified they received information via an exchange of emails from the management representative of the landlord (CJ) effectively captured by the last email from CJ submitted which states as follows – [brackets mine]

*I spoke to an owner and he advised that this [the throwing of water balloons] is coming from 510 (although he doesn't want his name mentioned). He told me he was coming home from work last Thursday or Friday and someone threw a water balloon at him and missed, he happened to see the general direction of it and suspected where it came from so he called the renter and spoke to her ( I [CJ] believe her name is Nicole, she walks his dog from time to time). He said that she admitted that her boyfriend was doing it and told her to knock it off. I am also fairly certain that she has a dog living in her suite as I've seen one on her patio many times. - as written*

The attending landlord testified they were confident in the information above provided to them by their manager that the rental unit responsible for the throwing of water balloons related to the applicant in this matter and on this basis issued the Notice to End. The landlord provided but did not present other evidence related to the information received.

The tenant(s) denied any responsibility in this matter related to the throwing of water balloons as claimed by the landlord. The tenant denied being contacted by anyone in respect to the water balloon incident(s) as provided by the landlord. The tenant testified they believe this to be based on misperceptions by the individuals involved.

## **Analysis**

In this type of application, the burden of proof rests with the landlord to provide evidence that the Notice was validly issued for the stated reasons and altogether establishing *sufficient* cause to end the tenancy.

I accept the landlord's confidence in their information upon which they are relying to meet their burden. However, upon review of their evidence I find it generally vague, speculative and rising to suspicion as to the events without ending in proof of the applicant's involvement in the information. I find the landlord's evidence is, at best, a hearsay account of what may have been and in the absence of the originator of the information it has very limited evidentiary weight. As a result, in the absence of any other relevant evidence or supporting facts in this matter I find that even on a balance of probabilities the landlord's evidence fails to establish the landlord's burden of proof. I find that the landlord has not provided *sufficient* evidence the Notice to End was rooted in *sufficient* reason as stated in the Notice and required by the Act. I find that in this matter the landlord did not have *sufficient* cause to issue a valid Notice to End. Therefore, **I Order** the Notice to End dated August 18, 2017 is cancelled, or set aside.

### **Conclusion**

The tenant's application is granted.

The landlord's Notice to End is set aside and is of no effect. The tenancy continues.

**This Decision is final and binding.**

*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 27, 2017

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Residential Tenancy Branch