



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The corporate landlord was represented by its agents KM and ML. The co-manager KM (the "landlord") primarily spoke on behalf of the corporate landlord.

As both parties were present I confirmed service. The tenant confirmed receipt of the landlord's 1 Month Notice and subsequent evidence package. The landlord confirmed receipt of the tenant's application for dispute resolution and the tenant's evidence. I find that the parties were each served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

### Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in March, 2013. The rental complex is oriented towards families and the tenant resided in her rental unit with her family which includes two teenage sons. The tenant and her sons have been involved in some altercations with other tenants of the rental building during her tenancy.

The landlord submitted into written evidence copies of warning letters issued to the tenant, complaint letters received regarding the tenant's behavior, and a written timeline of the incidents. The landlord said that they were not present during most of the reported incidents and has based their response on complaint letters received.

On April 11, 2017 the landlord issued a warning letter to the tenant regarding a social media post showing an altercation where the tenant and another resident of the building "swearing, screaming" and engaging in a public fight.

The landlord submitted into written evidence copies of letters from another tenant regarding an altercation on July 14, 2017 where the tenant was "yelling, screaming and throwing threats" to another resident. The landlord testified that there were subsequent interactions between the tenant and the other resident and the landlord issued a final warning letter dated August 6, 2017. The final warning letter references Clause 18 of the tenancy agreement and states that any further conflict will result in an immediate termination of the tenancy agreement.

The landlord testified that they have received additional letters from the other resident regarding conflicts that occurred after the date of the final warning letter. The landlord said that based on the additional complaints from the other resident they have issued the 1 Month Notice on August 28, 2017.

The copy of the 1 Month Notice submitted into written evidence provides that the reason for the Notice is that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord, tenant has adversely affected the quiet enjoyment, security, safety or well-being of another occupant, and the tenant has breached a material term of the tenancy agreement.

The tenant testified that she believes the copy of the 1 Month Notice she received only indicated that it was issued as the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The tenant said that the other reasons were not indicated. The tenant did not submit a copy of the 1 Month Notice into written evidence showing the other items not having been selected.

### Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant, adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant, or that the tenant has breached a material term of the tenancy agreement.

I find, on a balance of probabilities, that the landlord has not established cause for ending this tenancy. While the undisputed evidence is that the tenant engaged in verbal altercations with another resident I do not find that there is sufficient evidence to conclude that the behaviour of the tenant gives rise to an end of the tenancy.

Most of the complaint letters entered into written evidence are written by the other resident who was involved in the altercation. The evidence of the parties is that these incidents involved two aggressors; it was not simply a matter of the tenant attacking a passive victim. The landlord said that because these fights occurred in the common area it was disturbing to other families and residents. However, I find that there is insufficient evidence that these altercations adversely affected the quiet enjoyment of other residents or significantly interfered with other occupants. Based on the testimonies of the parties and the written evidence submitted I find that there were some verbal fights but I am unable to conclude that these fights had a significant affect or impact on any other residents such that it would give rise to an end of the tenancy.

I find that there is insufficient evidence to find that there has been a breach of a material term of the tenancy. The landlord references in their final warning letter clause 18 of the tenancy agreement but the copy of the tenancy agreement submitted into written evidence does not contain this referenced clause. A material term is defined in the Residential Tenancy Policy Guidelines as a term that is so important that the most trivial breach of that term gives the other party the right to end the agreement. I find that there

is insufficient evidence to show that the clause referenced by the landlord in their warning letter is a term of the tenancy agreement much less a material term.

I do not find that individually or cumulatively the tenant's actions have given rise to cause to end this tenancy.

### Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The Notice is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

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 20, 2017

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Residential Tenancy Branch