



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 205705 Development Co. Ltd. - Twin Rivers Apartments  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OLC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”), to cancel a One Month Notice to End Tenancy for Cause (the “Notice to End Tenancy”) issued on February 9, 2018, to request an order for the Landlord to comply with the Act and to receive compensation for the filing fee associated to this Application.

The Landlord, the Building Manager and the Tenant attended the hearing and affirmed that they would speak the truth during these proceedings. The parties were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Should the Notice to End Tenancy issued on February 9, 2018 be cancelled?

Should the Tenant be compensated for the filing fee associated to this Application?

### Background and Evidence

Both parties agreed that the month to month tenancy began on May 1, 2000 with the rent starting at \$415.00 per month, payable on the first day of each month and that the current rent is set at \$550.00 per month.

The Landlord and Tenant agreed that both the Notice of Hearing and the associated evidence was appropriately served to and received by each of them and forwarded to the Residential Tenancy Branch.

The parties agreed that the Notice to End Tenancy was personally served to the Tenant on February 9, 2018. The Notice to End Tenancy indicated that the Tenant must move out of the rental unit by March 9, 2018. On page two of the Notice to End Tenancy, the Landlord indicated the following as reasons for the issuance.

The Tenant was alleged to have:

- 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,
- put the Landlord's property at significant risk.

Further, that the Tenant has engaged in illegal activity that has or is likely to damage the Landlord's property.

In response, on February 14, 2018, the Tenant applied to the Residential Tenancy Branch to cancel the Notice to End Tenancy.

Landlord's evidence:

As the Landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice to End Tenancy, the Landlord was first to provide their testimony.

The Landlord testified that some time ago there was a leak in the Tenant's electric hot water tank, located in the Tenant's storage room. The Landlord said that the tank could not be accessed easily as there was too much stuff in the room. As a result of the leak, there was some damage downstairs and the eventual repair required both time and money. The Landlord felt that the Tenant was at least partially responsible for this damage as he had not sufficiently cooperated with the Building Manager or reported the leak in a timely manner.

The Landlord stated that the Tenant has an electric bike and that other tenants in the building have seen the Tenant carrying the bike up the common stairway and while doing so, damaging the carpet with the sprocket of the bike. Although the Landlord did not forward any witness statements or ask any witnesses to attend the hearing, the Building Manager did testify that he had personally observed the sprocket of the Tenant's bike catch and damage the carpet on the stairs on two occasions. Photos of the damaged carpet were submitted as evidence.

The Landlord complained that although there has been notice provided to all tenants to have their cars that are parked in the building's lot, in running order and able to move, the Tenant had not complied. The Landlord forwarded photos of the Tenant's car covered in snow and noted that the parking lot could not be adequately cleared because of the non-compliance. The Landlord stated that he did not want to tow the Tenant's vehicle as he did not want to cause further hardship.

The Landlord further testified that the Tenant's storage of a hang glider, bike and other items on his balcony is an eyesore and is dangerous for the tenant below if it falls. He believes that the items may be causing an issue with the structural integrity of the balcony.

Lastly, the Landlord said he is concerned that the charging of batteries in the Tenant's apartment is causing fumes and creating a dangerous situation.

Tenant's evidence:

The Tenant was invited to respond to the above testimony and provide evidence in relation to the Notice to End Tenancy.

The Tenant stated that the Landlord and Building Manager gained access to his apartment and worked on the leaking pipes and water tank on several occasions. The Tenant indicated that the Landlord and Building Manager may not have done an adequate job and even suggested that they may have damaged the pipes on purpose.

The Tenant admitted to taking his bike up the common stairs and that he makes an effort to carry it on different sides as to not damage the already well-worn carpet. He denies causing the damage on the stairs and feels that the damage is a combination of multiple tenants and due to normal wear and tear.

The Tenant admitted to storing many items on his balcony, but argued that it would not cause a risk and that the hang glider materials are light and well secured.

The Tenant acknowledged that his car is parked in the lot and that he has not been using it in the winter. He stated that he is willing to move the vehicle and requested the Landlord or Building Manager speak with him when they need it moved.

The Tenant stated that he has an electric bike and charges the sealed lead acid batteries in his apartment. He does not believe there are any related fumes or risk associated to the batteries.

The Tenant submitted that he is a long-term tenant and wishes to maintain his tenancy in the rental unit.

### Analysis

Section 47(1)(d) of the Act allows the Landlord to end the tenancy for the reasons stated above (from page two of the Notice to End Tenancy). It is important to note the Act's use of the words "significantly, unreasonably, and seriously" as strong wording to ensure that Landlord can only end the tenancy if the issues with the Tenant are in fact, significant, unreasonable and/or serious. Along with this high standard, comes the burden of proof for the Landlord to justify the end of the tenancy.

The Landlord and the Building Manager alleged that there were some damages to the rental building where the Tenant may be partially culpable. They also testified that the Tenant is difficult to deal with and has not cooperated with their wishes to clean up his balcony or move his vehicle from the parking lot. At no point during the hearing did the Landlord or Building Manager offer any evidence of the Tenant significantly interfering with or unreasonably disturbing another occupant or the Landlord.

The Landlord and the Building Manager were concerned with the load on the Tenant's balcony and the charging of batteries in the rental unit and how this could seriously jeopardize the health or safety or lawful right or interest of another occupant or the Landlord or put the Landlord's property at significant risk. During the hearing, the Landlord and the Building Manager did not provide any testimony with regards to the actions they took to determine or assess any risk regarding health or safety, nor did they discuss any mitigation of the situation they deemed as dangerous.

The Tenant provided testimony that often opposed that of the Landlord and Building Manager, however, this provided some context and reasonable explanations to counter the Landlord's concerns. This included the undisputed fact that the Landlord and Building Manager did gain access to his rental unit to address the plumbing issues, that the hang glider equipment, although bulky, was light and well fastened to his balcony, that the Tenant would move his vehicle when asked and that the batteries he was charging were for his electric bicycle and were sealed, posing little to no risk. During the hearing, the Landlord and the Building Manager did not address any circumstances that alleged the Tenant, or a person permitted on the property by that Tenant, had engaged in illegal activity that had, or is likely to damage the Landlord's property.

Based on the above, the testimony and evidence and on a balance of probabilities, I find that the Landlord and the Building Manager have not provided sufficient evidence to

support the reasons why the Notice to End Tenancy issued on February 9, 2018 should be upheld and the tenancy ended. As a result, the Notice to End Tenancy is canceled and the tenancy will continue.

The Landlord was advised that any monetary claims he may have against the Tenant would not be addressed in this hearing and he was directed to the Residential Tenancy Branch to obtain further information about pursuing a separate application.

The Tenant did not make any requests to have the Landlord comply with any specific part of the Act, although, the Tenant did hope for improved communications with the Landlord. I find the Tenant's application to order the Landlord to comply with the Act is dismissed without leave to reapply.

In cancelling this Notice to End Tenancy, I encourage the parties to communicate in written form in future with respect to tenancy-related concerns and to retain copies of all communications.

As the Tenant was successful with their Application, I find that they are entitled to recover the cost of the filing fee.

#### Conclusion

For the reasons set out above, I hereby uphold the Tenant's Application to cancel the Notice to End Tenancy, dated February 9, 2018. The tenancy between the Landlord and the Tenant will continue until ended in accordance with the Act.

I grant the Tenant permission to deduct the \$100.00 cost of the filing fee from one of their future monthly rent payments.

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: April 20, 2018

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Residential Tenancy Branch