



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute codes**    CNC

### **Introduction**

This hearing was convened in response to an application by the tenant filed September 10, 2018 to cancel a 1 Month Notice to End Tenancy for Cause (Notice to End) dated August 31, 2018.

The landlord and the tenant with their advocate attended the conference call hearing and were permitted to make submissions, ask questions, present witnesses and provide testimony. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The landlord acknowledged receiving the tenant's application and notice of hearing package. In addition the landlord acknowledged receiving tenant's evidence, however not submitting any evidence on their own behalf. The hearing proceeded on the merits of the tenant's application to cancel the landlord's Notice to End. The parties were informed of the landlord's evidentiary burden in this matter.

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

Is the notice to end tenancy valid?

Is there *sufficient* cause to end the tenancy?

If the Notice to End is upheld or the tenant's application dismissed is the landlord entitled to an Order of Possession?

### **Background and Evidence**

The tenant submitted a copy of the Notice to End in dispute. The Notice was received by them August 31, 2017 for the following stated reason;

*Tenant or person permitted on the property by the tenant has*

- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

The relevant undisputed evidence of the landlord and tenant is as follows. The landlord testified that on August 25, 2018 the tenant was seen by security camera spraying a guest of the property with bear mace whilst in the residential building of the rental unit. The tenant claims it was in self-defence to thwart a potential assault following verbal aggression with the guest. The landlord alerted police who attended however reportedly did not definitively resolve the incident by way of an arrest or charge. The guest reportedly did not press charges and the police inspected and returned the bear mace to the tenant. The landlord testified that some of their staff was affected by the incident in that they would not make rounds of the affected area of the mace spraying for fear of trouble breathing. As well the landlord testified that following the incident other tenants on the affected floor would not leave their rooms for concern of their safety. The landlord claimed the incident generally placed the building at risk. They claimed to know of several other occupants in the building with compromised aspiration (COPD), of which the applicant tenant testified being one. The landlord apologized for their lack of any supporting evidence in this matter

### **Analysis**

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

In the absence of other admissible evidence in this matter I accept the limited testimony of the landlord and the evidence of the tenant that there was a conflict between the tenant and the guest which resulted in the tenant discharging a repellant spray inside the residential building. I find the reason for discharging the spray is largely arguable and ultimately irrelevant. What is relevant in this matter is whether, on a balance of probabilities, the tenant's conduct did more than cause temporary concern or angst to other tenants or the landlord. That is, whether the tenant's conduct placed the safety or health of other individuals at risk. On a balance of probabilities I would accept that the bear spray incident could likely have affected the lawful right of other tenants to quiet enjoyment. However, in the absence of any verifiable or supporting evidence by the landlord as to all the above I am not satisfied the landlord has met their burden to support that the tenant's conduct seriously jeopardized the health, safety or lawful right or interest of the landlord or another occupant. I find that the landlord has not provided sufficient evidence that the Notice to End was for sufficient reason as stated in the Notice. As a result I am unable to establish the landlord issued the tenant a valid Notice

to End. It must be stated this is not to be construed by the tenant as exoneration of any conduct or responsibility of their part in this matter. The tenant has come perilously close to losing their tenancy because of their conduct. The landlord is at liberty to issue a new Notice to End of which the circumstances related to this matter may be used in its support.

As a result of all the above **I Order** the Notice to End dated August 21, 2017 set aside and of no effect.

### **Conclusion**

The tenant's application is granted. The landlord's Notice to End is set aside and 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: October 29, 2018

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Residential Tenancy Branch