



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding POLO HOTEL LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes           CNC

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on July 10, 2018, wherein the Tenant sought to cancel a 1 Month Notice to End Tenancy for Cause issued on June 29, 2018 (the "Notice").

The hearing was conducted by teleconference at 11:00 a.m. on August 31, 2018.

The Tenant and C.L., the Owner and Property Manager of the Corporation (who in turn owns the rental building) called into the hearing. The Tenant was assisted by an Advocate, S.S. The Landlord also called a witness, G.S., another tenant within the rental building. All present were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The only evidence submitted by either party was a copy of the Notice. The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

Should the Notice be cancelled?

### Background and Evidence

The Landlord testified that he took over ownership of the property approximately one year ago and management of the property in August of 2018. He confirmed that at the time he took over ownership of the building this tenancy was ongoing.

The Landlord stated that the rental unit is a SRO (Single Resident Occupation) in a building with 18 rooms; the tenants share four bathrooms.

The Tenant pays rent in the amount of \$525.00.

The Landlord confirmed that the former owner signed the Notice. He stated that while he didn't sign the Notice, he was doing construction on the building and was therefore at the rental building on a daily basis.

The reasons cited on the Notice are as follows:

- 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,
  - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - put the landlord's property at significant risk;

The Landlord testified that the Tenant has been observed spraying canola oil, or some sort of vegetable oil on the walls, doors, door handles, and floor in the common area. The Landlord stated that they have a daily cleaning of the property and the oil reappears on the door handles, door frames and the walls in the common areas. The Landlord stated that he is on the property every day and he also sees oil droplets and oil "everywhere".

The Landlord confirmed that he has not seen the Tenant do this, although based on information he has received from others he believes the Tenant is responsible.

The Landlord stated that he has a number of verbal complaints from other renters about the Tenant doing this. He confirmed that those other renters are afraid to give evidence because they claim that the Tenant is aggressive.

The Landlord conceded that the Tenant and the witness, G.S., also have issues and stated that they dislike each other. He noted however, that he receives the same type of complaints from G.S. as he receives from other renters.

The Landlord stated that the Tenant is not physically violent but he is aggressive and threatening in his communication.

The Landlord confirmed that he has tried to talk to the Tenant about this. He stated that he talked to the Tenant and the Tenant stated that he had some religious figure in and he had done some sort of application of oil or water to his door frame and door handle which he believed was spiritual; however he denied spraying oil on the rest of the property.

In cross examination the Landlord confirmed that there were security cameras in the building as of the last month. The Landlord confirmed that the security cameras only cover the two hallways and in this limited area they have not recorded the Tenant spraying oil as alleged.

In cross examination the Landlord confirmed that he has had personal experiences with the Tenant being aggressive and threatening. He stated that he has had conversations on the phone which have resulted in the Landlord hanging up because he can't have a meaningful discussion with him.

In cross examination the Landlord also stated that at one point the year prior he received 10 calls from the Tenant over two weeks. He stated that the Tenant was concerned that the other Tenants were conspiring against him.

The Landlord stated that the one time he approached the Tenant about the oil the Tenant was aggressive and he had to walk away to diffuse the situation.

The Landlord's witness, G.S., also testified. He stated that he has lived in the rental building for nearly two years. He confirmed that he lives across the hall from the Tenant.

G.S. testified that he observed the Tenant spraying oil on the building. He stated that he saw the Tenant spraying something out of a can on his way up the stairs in the stairwell. He was not able to say when this happened, only to guess that it was within the last three months. He claimed that it has been going on for a long while.

G.S. confirmed that he has never seen anyone else spraying oil. He stated that he has seen oil on the building on numerous occasions, describing the building as "crying".

G.S. confirmed that he does not have a relationship with the Tenant. He stated that the Tenant avoids him when they see each other.

In response to the Landlord's submissions the Tenant testified as follows. He confirmed that he moved into the rental property in September of 2015.

The Tenant stated that the allegation that he sprays oil on his door and door frame as well as common areas is an "outright lie". The Tenant also denied spraying oil in the building, although he confirmed that he has also seen the oil in the building on the walls and the door. The Tenant stated that he does not know who is doing it.

The Tenant confirmed that he had a friend come in and bless his rental unit. He stated that this person said a prayer and blessed his residence with water, not oil as alleged.

The Tenant also claimed that in September 6 of 2017 the witness, G.S., assaulted him. Notably, this was not put to G.S. when he was testifying and under cross examination by the Tenant's Advocate.

### Analysis

Ending a tenancy is a significant request and may only be done in accordance with the *Residential Tenancy Act*. A landlord who seeks to end a tenancy for cause pursuant to section 47 of the *Act* bears the burden of proving the reasons for ending the tenancy.

After consideration of the testimony before me, the limited documentary evidence provided by the parties, and on a balance of probabilities **I find the Tenant's Application should be granted and the Notice should be cancelled.**

The Landlord alleges that the Tenant has sprayed oil in the building causing a safety risk for others. He conceded that he had never personally seen the Tenant do this. The only witness called by the Landlord was unable to provide any specifics of his observations, only to guess that he saw the Tenant spraying something as he came up the stair case "in the past three months".

The Landlord also stated that other tenants were unwilling to testify at the hearing as they are afraid of the Tenant. The Landlord conceded that the witness, G.S., and the Tenant do not get along; yet, G.S. merely stated that the Tenant "keeps his distance" and does not engage with him.

The Tenant denies any such behaviour, although he admits he has seen oil in the building.

G.S. described the building as covered in oil to the extent the building appeared to be "crying". If that were the case it seems likely that more than one person would have seen the person responsible for spraying the oil in the act and would have come forward to testify.

Similarly, the Landlord could have submitted photos of the oil, video footage from the surveillance cameras, and witness statements. The Landlord failed to submit any such evidence save and except for the testimony of G.S.

The allegations on the Notice are that the Tenant has *significantly interfered* with or *unreasonably* disturbed another occupant or the Landlord, has *seriously jeopardized* the health or safety of another occupant or the landlord and put the landlord's property at *significant risk*. The use of such wording in the legislation is purposeful and reflects the standard of proof required for a landlord to end a tenancy for these reasons.

I find the Landlord has failed to meet the burden of proving this tenancy should end for the reasons cited on the Notice. The Landlords provided insufficient evidence that the Tenant is the one responsible for spraying oil in the rental building.

Conclusion

The Tenant's Application to cancel the Notice is granted. The tenancy shall continue 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: September 5, 2018

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Residential Tenancy Branch