



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WELBEC PROPERTIES INC and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The landlord's agent also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to give submissions. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, and specifically with respect to the reasons for issuing it?

### Background and Evidence

**The landlord's agent** (hereafter called the landlord) testified that this fixed term tenancy began on April 1, 2019 and expires on March 31, 2020 thereafter reverting to a month-to-month tenancy, and the tenant still resides in the rental unit. Rent in the amount of \$1,200.00 per month is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$600.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is 1 of 59 apartments in a complex and the

landlord also resides in the building. A copy of the tenancy agreement has not been provided as evidence for this hearing.

On August 27, 2019 the landlord served the tenant with a One Month Notice to End Tenancy for Cause, a copy of which has been provided for this hearing, by posting it to the door of the rental unit. It is dated August 27, 2019 and contains an effective date of vacancy of September 30, 2019. The reasons for issuing it state:

- Tenant has allowed an unreasonable number of occupants in the unit;
- 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;
  - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
  - damage the landlord's property;
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
  - jeopardize a lawful right or interest of another occupant or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord has noticed 2 vehicles. A BMW comes and another black expensive car, and they stay, but were parked in the parking lot all the time until the Notice was served. Now the tenant's girlfriend is staying there. She buzzes the tenant and he lets her in, or the landlord has found her knocking on the tenant's apartment door and does not know how she got into the building. The landlord always asks tenants at the time of signing the tenancy agreement if only the tenant will be residing there and they say yes.

On the 26<sup>th</sup> of August, 2019 the tenant entered another unit, went to the kitchen, opened a cupboard, and washed his hands in the kitchen sink. The little boy ran to his mom who was in the bathroom and said there was a man in the kitchen. The lady in that unit and her boyfriend told the tenant to leave. The tenant from that unit went to the landlord's unit pounding on the door frantic saying someone was in her apartment and wouldn't leave. The landlord went running upstairs and found the tenant yelling, swearing, punching walls, and had blood on his face, totally intoxicated. He fell, hit his head on the wall. The landlord went running out of the building while the tenant was coming down the stairs and

the landlord called 911. Police came and the landlord told the police that the tenant went up to his apartment, and they took the tenant away in handcuffs.

The landlord has been served with a Subpoena to a Witness in a trial scheduled in January, 2020 for a breach of probation charge against the tenant but no other charges.

With respect to illegal activity, the landlord testified that the tenant and his girlfriend fight early in the morning, and a lady below can't sleep due to the fighting. The tenant next door says it sounds like the tenant and his girlfriend are moving furniture. The landlord believes it has to do with drug activity but can't prove it.

With respect to breaching a material term of the tenancy agreement, the landlord testified that she told the tenant, and it's written in the lease, that there will be no partying, and the tenant has had a couple. The landlord asked the tenant to keep the music down and the tenant agreed. There was no written notice, the landlord just talked to him.

**The landlord's witness** testified that while in the bathroom at her apartment, her 2 sons were in the living room and told the witness that there was a man in the kitchen that they didn't know. The witness' boyfriend came out of the bedroom and asked the stranger to leave. He refused saying he could go where he wants and do what he wants. He was scaring the kids, and pushed against the witness' boyfriend. The boyfriend punched the tenant in the face and pushed him out the door. The witness has seen the tenant on the premises, but doesn't know his name or which apartment he lives in.

Just before this incident, the tenants above told the witness that this person had been looking in her window.

**The tenant** testified that there are not an unreasonable number of occupants in the rental unit, and that everyone who attends at the rental unit has their own place.

The tenant has been cooperative with the landlord. On the 2<sup>nd</sup> day after moving in, the tenant was playing music and was asked to turn it down and the tenant agreed. He also agreed to not park near the garbage area as requested.

On August 27 the police attended the tenant's rental unit asking about being assaulted.

The tenant had checked his mail box, which is right by the neighbour's door, then knocked on the neighbour's door, which he has done before to ask to buy a cigarette. The boyfriend does not live there, and there were 2 other guests present. The witness answered the door, the tenant asked to buy a cigarette, and her boyfriend came to the

door. Words were exchanged, like the tenant was trying to “come at her.” The tenant denies entering the apartment at all or pushing the boyfriend with his chest. The boyfriend hit the tenant with a metal pot or something. If the tenant had entered, he would have been charged. The police did not charge the tenant for this incident.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, the reasons for issuing it are in dispute.

Dealing firstly with the allegation of an unreasonable number of occupants, the landlord testified that 2 cars have been in the parking lot until the One Month Notice to End Tenancy for Cause was served. She also testified that now the tenant’s girlfriend is staying in the rental unit. The tenant didn’t dispute that, but I fail to see how the landlord claims an unreasonable number of occupants, and no one has provided a copy of the tenancy agreement for this hearing.

With respect to the alleged breach of a material term, I explained to the parties that a “material term” is a term of the tenancy agreement that is so important to one party or another, that the party would not have entered into the agreement had it not been a part of that agreement. Then, the landlord would be required to give the tenant written notice that the term must be adhered to and behaviour corrected and give a reasonable time to correct that breach. In this case, there is no evidence of a material term and no evidence of written notice to correct a breach. Therefore, that reason for issuing the One Month Notice to End Tenancy for Cause cannot be upheld.

With respect to illegal activity, the landlord testified that other tenants are bothered by the tenant and his girlfriend fighting, and that the landlord believes it has to do with drug activity but can’t prove it. There is absolutely no evidence of illegal drug activity, and therefore, that reason for ending the tenancy cannot be upheld.

I am not satisfied that the landlord has established that the tenant has put the landlord’s property at significant risk. The only evidence of that is the landlord’s testimony that the tenant punched a wall. I fail to see any significant risk to property, and therefore that reason cannot succeed.

The question remaining to be answered is: has the landlord established that the tenant has

- significantly interfered with or unreasonably disturbed another occupant or the landlord; or
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord gave testimony about an incident, largely being what she was told by the witness. There is no question that the tenant was assaulted and I accept the undisputed testimony of the landlord that the tenant was intoxicated at the time.

The witness gave some very basic testimony, void of many details, such as who was present, whether or not the tenant asked to buy a cigarette or anything else, who opened the door, where the tenant was when the witness came out of the bathroom, or whether or not the witness had provided cigarettes to the tenant in the past. I agree with the tenant that if he had just walked in and made himself at home in the kitchen, he would have been charged with an offence, but was not charged with any offence dealing with this incident. I found the tenant's testimony to be frank and truthful, and I accept the tenant's testimony that he did not enter into the witness' kitchen.

The witness is also a tenant, and has a lawful right to quiet enjoyment without unreasonable interference or disturbance. To be successful, the landlord must be able to demonstrate that such an interference or disturbance was significant or serious enough to warrant ending the tenancy. In the evidence before me, I find it is just as likely that the witness' boyfriend opened the door and hit the tenant.

I find there is insufficient evidence to uphold the One Month Notice to End Tenancy for Cause and I cancel it.

The tenant admits knocking on the door of the witness for the purpose of asking to buy a cigarette. There is no doubt that is not invited by the witness, considering the incident. Pursuant to Section 62(3) of the *Residential Tenancy Act*, I order the tenant to comply with the *Act* by refraining from disturbing another occupant.

### Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated August 27, 2019 is hereby cancelled and the tenancy continues.

I hereby order the tenant to comply with the *Residential Tenancy Act* by refraining from disturbing another occupant.

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 12, 2019

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Residential Tenancy Branch