



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      CNC

### Introduction

The tenants apply to cancel a one month Notice to End Tenancy for cause dated June 26, 2020 and served June 27.

The Notice alleges that the tenants' conduct has significantly interfered with or unreasonably disturbed another occupant or the landlord and has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. Either claim, if proved, is a lawful ground for eviction under s. 47 of the *Residential Tenancy Act* (the "RTA").

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only evidence that had been traded between the parties was accepted during the hearing.

### Issue(s) to be Decided

Does the evidence establish that the tenants' conduct or the conduct of either of them has interfered with or disturbed other occupants to the degree justifying eviction? Have the tenants jeopardized the health or safety of other occupants or the landlord?

### Background and Evidence

The rental unit is a two-bedroom apartment in a twelve unit building. The building itself is very old. It is a converted heritage home. The tenants reside there with three young children.

The tenancy started in June 2018. The current monthly rent is \$820.00, due on the first of each month. The landlord holds a \$400.00 security deposit.

Ms. T. for the landlord adduced a number of electronic messages (emails and texts) from other occupants in the building, complaining about yelling, swearing and domestic arguing said to be coming from these tenants. She indicated that a number of the complaints filed by her as evidence in support of the Notice have not been provided to the tenants before the hearing. It was her wish to protect the anonymity of some of the complaining tenants in the building.

As stated at hearing, the parties to a hearing are entitled to know the identity of all witnesses and particularly, the identity of their “accusers” so to speak. I declined to admit as evidence any written complaint the tenants had not been served with prior to the hearing.

Ms. T. testified that there have been multiple complaints about the tenants from four or five different tenants in the building. Usually the complaints are about domestic disputes; screaming and swearing. The police have been called twice she says. As well, the tenant Mr. GP. has been confrontational with other tenants. She said there has been at least one complaint each month in 2020.

The first complaint she referred to is an email from JT, a tenant living above the applicant tenants. The email notes police have been called “multiple times” for domestic disputes and that the tenant Mr. GP “disrespects property.” No further details were given.

The second complaint referred to by Ms. T. is an email also dated March 2, wherein S, another tenant living above these tenants reports that she’d called the police (not for the first time, she says) because the tenants were fighting, screaming and swearing at each other. Her email indicates it happens regularly and that this time the tenant Mr. G.P. was intoxicated and it was “scary.” She could hear the children crying.

As the result of these emails Ms. T. sent the tenants a “caution notice” dated March 3 indicating the domestic disturbance was disturbing other tenants and to stop it or else they would be evicted.

Ms. T. next adduced a second email from JT dated June 8 indicating the tenants had arrived home late that night and had awoken him with their yelling and arguing and door slamming. JT works and this conduct is disturbing his needed sleep.

The last complaint Ms. T. adduces is from TD, a tenant on the third floor. It is an email dated May 9 and reports that he came home from work to hear the tenants' kids yelling outside. Then Mr. GP began yelling so TD, from his balcony, told Mr. GP to shut up. He says that shortly after, Mr. GP threatened to beat him up if he ran into him. He says he was scared.

Both tenants testified. Ms. SL said she does not know who JT is. She said that on the day in question her kids were not yelling but rather she was crying and distraught in remembrance of a child of hers who had died on that day sometime in the past. She said Mr. GP could not have been intoxicated as alleged because he does not drink.

In response to TD's email the tenants testified that he yelled at and threatened to assault Ms. SL, not Mr. GP. And that they were so upset by TD's threat that they called the police. She had reported TD for smoking previously. She said the Covid pandemic has stuck everyone at home and all are a bit short tempered.

Mr. GP says that this apartment is very close quarters. There are kitchen windows right above their door and where they sit outside. People can hear everything in the building. He denies any confrontations with other tenants

### Analysis

The ending of a tenancy is a very serious matter. While the burden of proof is on a balance of probabilities, a landlord is expected to present clear and cogent evidence of the event(s) and the effect of the event(s) relied on to end the tenancy.

I cancel the Notice to End Tenancy. The evidence provided by the landlord, composed of unsigned emails, cannot stand in the face of the tenants' sworn denials and explanations for each incident. Additionally, but for email of June 8 from JT, the complaints offer little ground for determination of the level of disturbance and whether it was of such as to reach the necessary level of being an "unreasonable disturbance" in what is not disputed to be a very old house. Had the landlord filed objective evidence like a recording of the disturbances or had the complaining occupants attended, testified and been exposed to questioning, my conclusion may well have been different.

The landlord's allegation in the Notice that the tenants are jeopardizing the health or safety of other occupants is based on a repair order for a heat monitor in 2018 in which the repairman indicated a tenant had disconnected the wiring. That allegation was not

brought to the tenants' attention at the time. Nor were they presented with the bill. In such circumstances, even had it been one of these tenants who disconnected the apparatus, the great delay on the landlord's part indicates that health and safety of others was not "seriously jeopardized" as the *RTA* requires. This allegation in the Notice has not been proven.

### Conclusion

The application is allowed. The Notice to End Tenancy dated June 26, 2020 is cancelled.

It should be noted that this decision does not mean that the disturbance or interference did not occur or that the tenants are "innocent", merely that it has not been proved satisfactorily at this hearing. The landlord is free to issue another Notice for conduct occurring after the date of this Notice. The tenants should be forewarned that if they are permitting their disputes to escalate to the level of shouting and swearing, or are arriving at the building late at night and shouting or swearing for all to hear, the result may be different the next time the landlord issues a Notice to End Tenancy for cause. They should conduct themselves accordingly.

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: August 10, 2020

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Residential Tenancy Branch