



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, OLC, RP

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and for an order that the landlord make repairs to the rental unit or property.

The landlord attended the hearing, gave affirmed testimony and called 2 witnesses who gave affirmed testimony. One of the tenants also attended, gave affirmed testimony, and was assisted by an Advocate. The tenant also called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses and to give submissions.

At the commencement of the hearing, I amended the application to correct the spelling of the landlord's name, with the consent of the parties, and the frontal page of this Decision reflects that amendment.

Also, at the commencement of the hearing, I advised the parties that the Rules of Procedure specify that multiple applications made in a single application must be related, and the tenant's Advocate agreed that the primary application is with respect to a notice to end the tenancy. Therefore, the hearing concentrated only on that primary application.

The parties agreed that all evidence has been exchanged, and all relevant evidence relating to the notice to end the tenancy has been reviewed and is considered in this Decision.

### Issues to be Decided

The issue remaining to be decided is: has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on May 16, 2013 and expired on May 31, 2014 thereafter reverting to a month-to-month tenancy, and the tenants still reside in the rental unit. Rent in the amount of \$850.00 is payable on the 1<sup>st</sup> day of each month, which has never been increased during the tenancy. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$425.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is suite within a 21 unit building, and the landlord does not reside on the property. A copy of the tenancy agreement has been provided by the tenants as evidence for this hearing.

The landlord further testified that the tenant has been credited \$200.00 per month for gardening and \$300.00 per month for cleaning, until November 1, 2020 when the tenants paid rent in full for November and again in December, 2020.

On October 19, 2020 the landlord served the tenants with a document entitled: "1 Month Notice to End Tenancy for Cause and 1 Month Notice to End Tenancy for End of Employment," a copy of which has been provided as evidence for this hearing. It is a 2-page form dated October 19, 2020 containing an effective date of vacancy of November 30, 2020. The reasons for issuing it state:

- 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;
- Tenant's rental unit/site is part of the tenant's employment as a caretaker, manager or superintendent of the property, the tenant's employment has ended and the landlord intends to rent or provide the rental unit/site to a new caretaker, manager or superintendent.

The landlord testified that a written complaint has been received from another tenant in the rental complex, who told the landlord that his life is in danger in the place that he lives. Reading from the written complaint, the landlord reiterated that the other tenant was attacked by the tenant husband.

Other tenants are afraid of the tenant husband, and some have moved away; others don't want to write a letter. When working, the tenant was good at his job, but a lot of tenants are afraid of him. Only 1 other tenant had the guts to face him. The landlord has not given any warning letters, but told the tenant many times about his behaviour;

that other tenants are afraid of him; that he must not continue to tell other tenants that he is the boss of the building.

Now, since the tenant is no longer the caretaker, the landlord testified that he uses that reason to evict the tenant as well. The landlord is looking for another caretaker, and the landlord's witness is doing the job temporarily until another is hired. The tenant quit his duties and the landlord told the tenant that it means he cannot stay in the apartment any longer, but the tenant yelled and screamed at the landlord in the street.

**The landlord's first witness** (DY) is the landlord's spouse and also a co-landlord, although not named in the tenancy agreement, and is hereafter referred to as "the landlord's spouse." She testified that the tenant wife (PR) called on October 7, 2020 saying that another tenant in the building was fighting with the tenant husband (CB) about fire department regulations and about removing a car.

A couple of days later the tenant wife (PR) called again stating that the tenant husband (CB) had called police, and the police took him to the police station. The next day, the landlord's spouse received a call from a Constable with the RCMP saying that the tenant had to be evicted for safety reasons; he was violent and might hurt someone. The landlord's spouse felt she had no choice, and if the tenant wasn't evicted and he hurt someone, the landlords could be liable.

Also, many of the tenants in the building told the landlord's spouse that they are afraid of the tenant husband and some of them have moved out because of him. She also witnessed herself the tenant yelling violently at her and the landlord on the street, and they couldn't calm him down. The landlord's spouse also witnessed the tenant yelling at another tenant, and for safety reasons of other tenants in the building, she felt she had no choice but to issue the Notice. No written warning was given to the tenant, but the landlord's spouse told the tenant to speak softly and not yell.

The landlord's spouse is a nurse and safety is very important. The tenant was not fired, but he stopped doing the job, started to pay full rent and wouldn't answer the phone. No cleaning was done in November and other tenants complained about that, so the landlord's spouse cleaned, and also got a call about a lot of leaves in the entrance. The landlord's spouse is not convinced that all of that came in on someone's shoes but believes that someone put the leaves there purposely.

The landlord's spouse also testified that the front entrance lock was not working and the tenant fixed it, then the back entrance to parkade, which never had any problems has been removed completely and a locksmith had to be called. The landlords don't have

money to pay for more vandalism. The landlord's spouse is elderly, and so is the landlord.

**The landlord's second witness** (AS) testified that he has been a tenant in the building for 8 years and has witnessed the tenant husband in conflicts, usually from his loud voice, at times with his spouse and other times with other tenants.

The witness was a friend with the tenant, more than just neighbours. However, on October 7, 2020 in front of the building the tenant attacked the witness out of nowhere, and told the witness to move his vehicle. The witness said he'd deal with it, but to avoid being hit by the tenant, the witness moved and told the tenant to calm down. To the witness' surprise, the tenant kept calling the witness vulgar names, shouting very loudly and threatened to hurt the witness. The witness tried to diffuse the situation by reminding the tenant that they were friends, but the tenant kept saying he was the boss. The witness called police.

Police called the witness the same day, asked questions, and said that the tenant needed to be evicted and until then, stay away, don't talk to the tenant, and that he has a violent nature.

On October 9, 2020 the witness was at the parking area and was approached by the tenant who called the witness a bunch of names. The witness told the tenant that he didn't want to get into conflict with him. Later, police knocked on the witness' door and asked more questions. The police told the witness that the tenant had called police reversing the story and that they were going to take the tenant away.

Police were called again on October 20, 2020, after the witness heard the tenant shouting from the street at midnight, threatening and calling the witness names. Police said that they could not do anything until the tenant was evicted. Police also told the witness to, "Watch your back and try to have someone with you."

The landlords are looking for a new caretaker and the witness offered to do it until the landlords find someone. However, each time the witness tried to clean up the place, he keeps finding things worse than after cleaning.

**The tenant wife** (PR) testified that her husband is on disability and has panic attacks, and his mental health is affected now. The tenants cannot afford to move to another place and the tenants' son is also living with them.

The tenant's husband told the landlord's witness to move his truck because the landlord told him to do so. The witness started to scream at the tenant's husband and they

argued. The landlord's witness said that he called police because he didn't know how much he could hurt the tenant husband. The landlord's witness also said that he is a professional of martial arts, works in bars often and involved in fights. The tenants are more fearful of the landlord's witness.

The tenant also testified that she called police the second time after her husband told her that the landlord's witness told him he would take him to the park and hurt him.

On October 16, 2020 the tenants received a fire department report and there were a lot of repairs that had to be done, and the tenant's husband asked the landlord how much he would pay for the work to be completed, but the landlord said that no extra money would be paid. The rent reduction was for cleaning the building and the yard, but the landlord asked him to repair the handle on the door, remove the witness' truck, clean a dirty truck and clean up the electrical room and storage room, both of which he did.

The tenants' goal is to stay in the rental unit and pay full rent.

**The tenants' witness** (SV) testified that she is a Social Worker and works with older tenants who live in the building, and has referred tenants to community services.

The witness lived in the building between 2000 and 2001, and testified that the landlord has not responded properly when requests for repairs are made by tenants. The landlord usually gets other people to do things on his behalf, and when not done, the landlord gets mad or gives a notice to end the tenancies.

The witness also testified that the tenant struggles with severe anxiety and has a short-term temper, but has been working with a team assisting to manage his mental health. If the tenant feels threatened, he'll react but will not hurt anyone by his own accord.

#### SUBMISSIONS OF THE LANDLORD'S SPOUSE:

The landlord's spouse told the tenant husband to leave the issue of moving the witness' car with her. Further, the tenant said there was no problem with him doing the chores ordered by the fire department, but nothing was done, and the landlord's spouse had to do it all herself. The tenant wife keeps asking for more money, but the tenant husband has been doing it for years and has been credited for it.

#### SUBMISSIONS OF THE TENANT'S ADVOCATE:

The landlord has made it clear in the hearing that he attacks employees in relationship to a tenancy, but there is nothing in the tenancy agreement or any discussion about that when the tenancy began. The Advocate asks that they be treated separately.

There was no written warning given by the landlord, and the parties had a good relationship until the tenant said he didn't want to work for the landlord anymore. The landlord cannot rely on this issue alone; the tenants should stay in the rental unit as tenants, without working for the landlord anymore.

### Analysis

Firstly, although I don't entirely agree with the submission of the tenants' Advocate that the landlord has made it clear in the hearing that he attacks employees, however I do agree that the employment relationship and the tenancy relationship are 2 separate relationships because there is nothing in the tenancy agreement about employment or remuneration.

Further, the landlord has not hired another caretaker, and I cannot conclude in the evidence that the landlord needs this rental unit for a new caretaker. Therefore, I find that the landlord has not established that reason for ending the tenancy.

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 reasons for issuing it.

I have reviewed the Notice, and it is in an approved form previous to the current approved form. I also find that it contains information required by the *Act*.

A landlord has a responsibility of providing all tenants with quiet enjoyment of their rental units. I have heard testimony from the landlord, the landlord's spouse, who is also a landlord, as well as a witness who described some disturbing events. The landlord's spouse also testified that some other tenants have vacated due to the behaviour of the tenant husband, but no testimony with respect to how long ago that may have happened or if it was on one occasion only. The landlord's witness gave some testimony of what the police told him, but I am not convinced of that considering the witness statement describes things somewhat differently, and differently from the tenant's testimony. He didn't provide any testimony of his behaviour during the altercation about moving a vehicle. The tenant wife testified, and the evidentiary material indicates that the witness has also threatened the tenant husband.

I also consider the testimony of the tenants' witness (SV) that the tenant husband struggles with severe anxiety and has a short-term temper, and that he won't hurt anyone by his own accord. She also testified that the landlord usually gets people to do things on his behalf and when they don't, he gets mad or gives notices to end the tenancies. I have also reviewed all of the evidence of the parties, including numerous

text messages wherein it is clear that the landlords expected the tenant to do far more than clean the common areas of the rental complex and yard maintenance.

In the circumstances, I find that the landlord has not issued the Notice in good faith, and I am not satisfied that any disturbances caused by the tenant were severe enough to warrant ending the tenancy, particularly considering the conflicting testimony that the landlord's witness may have been an instigator, and I cancel the Notice.

### Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated October 19, 2020 is hereby cancelled and the tenancy continues.

The balance of the tenants' application is hereby dismissed with leave to reapply.

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: December 15, 2020

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Residential Tenancy Branch