



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Mount Benson Senior Citizen Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a Notice to End Tenancy for cause.

The tenant with a Legal Advocate, and the landlords agents attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

Is the tenant entitled to have the One Month Notice to End Tenancy Cancelled?

### Background and Evidence

The parties agree that this tenancy started on June 01, 2007. Rent for this unit is \$360.00 per month and is due on the first day of each month

The landlord testifies that the tenant was served a One Month Notice to End Tenancy for cause by posting the Notice to the tenant's door on May 09, 2013. This notice has an effective date of June 30, 2013 and gives the following reason to end the tenancy:

*The tenant or a person permitted on the residential property by the tenant has*

*(i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*

*(ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*

*(iii) Put the landlord's property at significant risk;*

The building manager (KM) testifies that when he started in his role two years ago he was briefed by the previous manager as to problem tenants one of whom was this tenant. KM testifies that he decided to give the tenant the benefit of the doubt but found the tenant to be confrontational and controversial. KM testifies that other tenants have made complaints about this tenant and the tenant has been spoken to many times asking the tenant to be more respectful to other tenants and staff. KM testifies that he reviewed the tenants file and saw other complaints recorded by the previous manager. KM spoke to the previous manager who informed KM that the tenant had been warned previously about his behaviour. KM agrees that the tenant has never been given a written warning or breach letter.

KM testifies that he was informed about an incident in the lobby where the tenant knowing there had been problems with the elevator doors, stuck an object in the doors to restrict the doors from closing. KM testifies that this has put the landlord's property at significant risk.

The Senior Administrator (GS) testifies that he had cautioned the tenant in his office in 2011 after the tenant had made comments to two female tenants threatening them by using a slit my throat gesture, telling a tenant that she will be murdered by someone who gave MA a black eye and that the other tenants obituary will be in the local paper

soon. The Police were called by that tenant and her complaints were put in writing on March 15, 2011 to the landlord. GS testifies that the tenant was warned that his behaviour cannot be repeated however the tenant has continued to upset harass and bully other tenants.

GS testifies that the recent incident in the lobby was reported to the landlord by the two female tenants involved. In their letters they have stated that they were sitting in the lobby with the door open to get some air. The tenant came in and started yelling at the female tenants about management. The tenant left the lobby and then came back and kicked the door wedge out closing the door loudly. The female tenants report that they told the tenant to shut up and then due to his behaviour decided to leave the lobby entering the elevator. However before the door could fully close the tenant had stuck a shoe brush in the elevator door, he continued to yell at the female tenants. The female tenants report that they were scared of the tenant and his temper was out of control.

KM testifies that he has personally witnessed the tenant following staff badgering them about how they are doing their jobs and following and badgering other tenants, if they don't agree with him.

GS calls their witness who is the former manager of the building. The witness testifies that the tenant used to follow the witness around making rude comments and name calling. The tenant would be waiting for the witness at 6.30 a.m. when the witness would come to open the laundry room door and then proceed to deride the witness about how the witness did his job. The witness testifies that on one occasion the tenant tried to get the witness fired for indecent exposure and now calls him Mr indecent exposure whenever he enters the building. The witness testifies that the tenant continually makes negative comments about staff and other tenants.

The tenant declines to cross examine the witness.

GS requests that the Notice is upheld and orally requests an Order of Possession for July 01, 2013.

The tenants advocate (JS) states that the tenant has never been given a warning letter by the landlords. When complaints about him have been received these have not been discussed with the tenant and some of these complaints go back to 2011. Other tenants have written in support of the tenant and one of these letters is from a female tenant who wrote a complaint letter in 2011 however she and the tenant are now friends. JS states that the management are fueling the opinions of staff and tenants against this tenant and the complaints have been exaggerated. JS states that the tenant is a stickler for rules especially rules concerning safety issues and the management are not enforcing the rule about having the fire doors closed at all times. JS directs us to the letter from the tenant's employer who speaks about the tenant's attention to safety. JS states that when the tenant speaks to management it is about the safety rules not being enforced properly. The tenant denies the reasons given on the notice that he has significantly disturbed other tenants or the landlord, that he has jeopardized the health or safety or lawful right or interest of other occupants or the landlord and denies that he has put the landlord's property at significant risk.

The tenant testifies about the incident in the lobby. The tenant testifies that he came home from work and saw the fire door open. The tenant asked the two tenants in the lobby why it was open. The tenant then went upstairs and got a shoe brush to clean his work boots and went back downstairs to brush them off. On arriving in the lobby the tenant testifies that he saw the door was still open so he went and brushed his boots off and kicked the wedge away to close the door. As the tenant approached the elevator the tenant testifies the door was just closing so instead of putting his hand in the door to keep it open so he could get on he used the handle of the shoe brush. The tenant testifies that the elevator is old and he is not responsible for any damage to the elevator. The tenant testifies that he is at work and does not have time to follow staff or other tenants around and cause all these alleged problems.

The tenants advocate JS questions GS and asks when the landlords witness stopped working at the building. GS responds two years ago. JS asks GS about the witness experience in the building and is it recent. GS responds no.

The landlord cross examines the tenant and asks the tenant if he had informed the building manager that the fire door was open. The tenant responds that he had not because the female tenants had told the tenant that the building manager KM had given them permission to open the door. GS asks the tenant if those tenants had shown the tenant anything to show they had permission. The tenant responds no.

### Analysis

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. It is not enough for a landlord to be aggravated or annoyed by a tenant's behaviour a landlord must meet the burden of proof that this behaviour is so significant that it would warrant an end to the tenancy.

I have reviewed the documentation before including the complaint letters from other tenants and the statements from management. I have also taken into consideration the testimony I have heard today from the parties involved. I find that despite the landlords concerns, no written warnings have been given to the tenant on any occasion. The landlord has relied on verbal warnings which cannot be confirmed or corroborated. I also find that as some of these alleged incidents happened in 2011 no action was taken against the tenant at that time. I agree that it appears that the tenant is meddlesome in his approach to the staff working in the building and possibly confrontational about certain issues; however for me to issue an Order of Possession I must be satisfied that the tenants behaviour is significant in its nature that it has caused serious disturbances

to either the landlord or other tenants, or that the tenants behaviour has seriously jeopardized the health, safety or lawful right of the landlord or other occupants or that the tenants behaviour has put the landlords property at significant risk.

The landlord has provided some recent complaint letters from aggravated tenants however the landlord has not asked any of these tenant' to appear as a witness to give sworn testimony or submit to cross examination. The tenant has also provided some witness letters from tenants praising the tenants for being a good neighbour which appear to be in direct conflict to the landlord's letters. While I have considered both the complaint letters and the praise letters I find as is often the case in a building that not all tenants will get along and arguments will ensure and tempers will raise. Therefore I can put little weight on this evidence in making my determination about significantly disturbing other tenants.

I am not satisfied that the tenant's behaviour is enough to warrant the extreme step of evicting the tenant. The landlord has not shown that the tenant is in breach of the *Residential Tenancy Act*, no warning letters have been given to the tenant and it appears that the tenant has not been given notice that there have been complaints from other tenants so the tenant could address these complaints. Furthermore I find the building manager's testimony that the tenant's actions in putting a shoe brush in the elevator door put the landlord's property at significant risk is not corroborated by any evidence to show how this has put the elevator at significant risk or caused damage to the elevator.

Therefore, in the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

However I caution the tenant to avoid being confrontational about issues the tenant feels strongly about for example keeping fire doors closed. The tenant should avoid challenging other tenants and instead put his concerns in writing to the landlord. The

tenant should also refrain from making comments on the landlord's ability to perform their tasks in managing the building. It is not a tenant's job to police safety issues. A tenant does however have a right to file an application for dispute resolution if the tenant feels the landlords are not complying with the *Act*. If further incidents occur the tenant is at risk of being served a written warning and another Notice to End Tenancy which may result in an Order of Possession being issued to the landlord.

### Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated, May 09, 2013 is cancelled and the tenancy will continue.

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: June 07, 2013

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Residential Tenancy Branch

