



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MT, CNC, OLC

### Introduction

The tenant applied requesting more time to cancel a 1 month Notice to end tenancy; to cancel a 1 month Notice to end tenancy and an order that the landlord comply with the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

The landlord was not sure if they had received an evidence submission that was sent via facsimile on November 20, 2013. The tenant provided a facsimile cover sheet that showed the evidence had been sent to the facsimile service number provided on the Notice ending tenancy. The landlord said they would check to see if the documents had arrived, but during the hearing they did not confirm receipt.

The tenant's evidence submission was given to the Residential Tenancy Branch (RTB) on November 20, 2013. The Residential Tenancy Branch Rules of Procedure require evidence to be submitted to the RTB no later than 5 days prior to a hearing. The days do not include the day of service, weekends, statutory holidays or the day of the hearing. Service of documents on November 20, 2013 would not meet this requirement. Therefore, the tenant was informed that the evidence could be entered via oral testimony.

The parties confirmed receipt of all other evidence and documents within the required time-frame; including evidence the tenant supplied with the hearing package.

The tenant confirmed that she did not wish to seek any Order for compliance.

The landlord said that it appeared the tenant had not applied to dispute the Notice, as the details of dispute portion of the application mentioned only a request for more time. The landlord then agreed that the tenant had made the appropriate selection on the upper portion of page 2 of the application; requesting notice cancellation.

#### Issue(s) to be Decided

Should the 1 month Notice ending tenancy for cause issued on October 8, 2013 be cancelled?

#### Background and Evidence

The current tenancy commenced on September 1, 2013 and is for a fixed term ending February 28, 2014, at which point the tenant must vacate the unit. This is the 3<sup>rd</sup> fixed term tenancy the parties have signed. The initial tenancy ended on August 31, 2012; the 2<sup>nd</sup> tenancy ended effective August 31, 2013; the tenant supplied copies of those tenancy agreements.

Rent is due on the 1<sup>st</sup> day of each month.

There was no dispute that on October 16, 2013 the tenant received a 1 month Notice to end tenancy for cause that had been issued on October 8, 2013. The tenant disputed the Notice the next day.

The reason stated on the Notice to end tenancy was that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The Notice requires the tenant to vacate the unit on November 30, 2013.

A copy of the current tenancy agreement and a July 26, 2013 "Behavioural Agreement," signed by the parties was supplied as evidence. There was no dispute that the tenant resides in a building that houses forty-nine other occupants, all of whom require some level of support. The landlord operates as a non-profit society, with a goal of assisting occupants.

The landlord supplied a summary of alleged behaviours the tenant has displayed since September 21, 2012. Most recently the landlord alleged that the tenant has threatened staff and made other occupants fearful.

On August 8, 2013 the landlord issued the tenant a written warning in relation to her behaviour. The letter noted the tenant had signed a Care Plan that included agreement the tenant would bring problems to 1 of the staff who work in the building. The letter indicated that there had been recent altercations between the tenant and other occupants, resulting in police attendance. The tenant was alleged to have told staff she

would not stop and that she engaged in name calling. The tenant was warned this behaviour could result in termination of her tenancy.

The landlord's written submission indicated that the letter was meant as a warning in relation to the tenant's behaviour over the past several months, including multiple confrontations with staff.

On September 18, 2013 another occupant told staff that the tenant had made derogatory comments about the occupant and his dog and comments in relation to the treatment of the occupant's spouse. This occupant felt harassed, so went to staff to complain.

On September 25, 2013 the program director met with the tenant to discuss her behaviour, including interference with others, lack of consideration, and multiple calls to the police. The landlord stated that at this point the tenant agreed to consider a move and working with BC Housing to locate more suitable housing.

The landlord told the tenant she would summarize their meeting in writing. A September 30, 2013 letter issued to the tenant, supplied as evidence, was meant as a summary and was not a warning letter. When staff attempted to give the tenant the written summary, she refused to accept the letter; instead she berated staff and said she would "blow your head off." The letter outlined what the landlord believed was an agreement to locate to a more suitable housing option.

On October 4, 2013 the landlord issued a letter to the tenant entitled "Verbally Assaultive, threatening and Harassing Behaviour." The letter stated that when staff had given the tenant the letter on October 1, 2012 she had refused it; that she and another occupant had then circled the staff member, verbally berating and threatening the staff member. There were other occupants present, who reported being traumatized by what they witnessed. The letter was accompanied by the Notice ending tenancy.

The landlord said that their staff maintains notes by way of a daily log and that they complete incident reports. The landlord intended to offer a summary of the behaviour displayed by the tenant, not a "dissertation" which could have included fifty pages.

The tenant's advocate responded that the landlord must meet the burden of proving the tenancy should end. The advocate would have liked the opportunity to cross-examine witnesses to view the supporting documents that the landlord said they have maintained.

The tenant denied the allegations made by the landlord and said that she did call animal control on one occasion, as a staff member had secretly provided her with the telephone number so she could report an occupant of the building. The tenant did not dispute that, at times, she will insert herself into situations and that she has been in

some confrontations with others. The tenant denied telling anyone that she would blow their head off and said that she has not ever called the police.

### Analysis

The tenant has applied to cancel a Notice ending tenancy for cause issued on October 8, 2013; the effective date of the Notice is November 30, 2013. In a case where a tenant applies to cancel a Notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

After considering all of the written and oral submissions I find that the landlord has provided insufficient evidence to show that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

I considered the submissions in relation to the time this current tenancy has been in force. The landlord has seen fit to re-establish a fixed-term tenancy for a 3<sup>rd</sup> term. Events that are alleged to have occurred during any previous tenancy have little bearing on a tenancy that commenced on September 1; 2013.

The landlord chose to enter into the current tenancy effective September 1, 2013; which leads me to conclude that there were no serious concerns in relation to the tenant's behaviour at that time. It is logical to assume that if the tenant's behaviour had been unacceptable the September 1, 2013 tenancy agreement would not have been signed.

The landlord has relied upon a warning letter given to the tenant in August 2013; a period of time that was not within the current tenancy. This warning was given less than 1 month before the landlord chose to enter into another 6 month fixed term tenancy with the tenant. This leads me to conclude the tenant's behaviour was not unexpected or serious; particularly given the described mandate of this landlord.

Therefore, I have considered the alleged interference or disturbances caused since the start of this tenancy, September 1, 2013.

The landlord chose not to provide any of the staff notes, any copies of critical incident reports, any statements signed by staff members or any witnesses to the alleged events. Given the landlord's burden of proving the allegations I find it would have been reasonable to provide more than a summary of allegations; so that the veracity of that summary could be adequately explored and examined.

The letter issued to the tenant on September 30, 2013 was not a warning letter. Therefore, the Notice was issued on the basis of the alleged incident that occurred on October 1, 2013. In the absence of any evidence, other than a brief summary of what occurred on October 1, 2013, I find, on the balance of probabilities that the landlord has failed to meet the burden proving the tenant significantly interfered with or unreasonably

disturbed another occupant or the landlord. I find a general description of an alleged event, in the absence of any corroborating testimony and witness statements is insufficient proof.

Therefore, I find that the 1 month Notice ending tenancy for cause issued on October 8, 2013 is of no force and effect. This tenancy will continue until it is ended in accordance with the Act.

### Conclusion

The 1 month Notice ending tenancy for cause issued on October 8, 2013 is of no force or effect.

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 28, 2013

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Residential Tenancy Branch

