



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Ivan Hoe Motel  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** CNC

### **Introduction**

This Hearing dealt with the Tenant's application filed December 17, 2013, to cancel a *One Month Notice to End Tenancy for Cause* issued December 10, 2013 (the Notice).

The parties gave affirmed testimony at the Hearing.

This matter was originally scheduled to be heard on February 5, 2014, but was adjourned because the Tenant was in hospital.

The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

It was determined that the Tenant served the Landlords with the Notice of Hearing documents by registered mail sent on December 19, 2013. The Tenant also served the Landlords with copies of his documentary evidence by registered mail sent on January 31, 2014.

### **Issue to be Decided**

- Should the Notice be cancelled?

### **Background and Evidence**

The Landlord's agent MS gave the following testimony:

The rental property is a hotel. The Tenant moved into the rental unit on July 29, 2010. MS testified that he had no issues with the Tenant's behavior until about a year ago.

MS stated that the Tenant stops other tenants and guests from using the common kitchen on the 5<sup>th</sup> floor. He testified that there was an altercation between the Tenant and another occupant on December 6, 2013, and that the police were called by the Tenant. MS stated that the police told him that the Tenant had a disability and that the matter “should be dealt with in-house”. MS stated that the police have also been called on March 21 and 22, due to the Tenant’s behaviour.

MS testified that the Tenant has threatened staff at the rental property, other tenants, and guests by making gestures (dragging his thumb across his throat) and intimidating them. He stated that the Tenant has been warned “numerous times”. MS stated that he doesn’t keep a file and therefore could not offer dates or names of people who were threatened.

The Tenant’s advocate asked MS if the police were called as a result of the Tenant’s alleged threatening behavior towards others. MS replied that there have been 4 police calls made, and that 3 of them were made by the Tenant.

MS testified that the Tenant was seen rolling up toilet paper and placing it in the toilet, causing floods. He stated that the witness to this behaviour has checked out of the hotel. The Landlord did not provide written documentation to support this claim (for example, a copy of the plumber’s invoice or a written statement attesting to the flooding).

MS stated that he has no direct knowledge of these incidents, other than what has been reported to him by numerous complainants. MS stated that he had no witnesses to attest to what occurred because they moved out because of the Tenant’s behavior. MS testified that there is a security camera in the common kitchen, but that it was not working on December 6, 2013. He stated that it is working now and that he has video of the Tenant in the kitchen harassing other people.

The Tenant gave the following testimony:

The Tenant denied stopping others from using the common kitchen. He stated that he only used the kitchen once every one or two weeks to cook potatoes or eggs. The Tenant stated that he uses “free food places” for meals twice a day.

The Tenant stated that he uses a cane because he has sciatic pain and arthritis. The Tenant testified that his medication makes him drowsy. The Tenant testified that he had a heart attack on February 1, 2014.

The Tenant testified that he has no recollection of any incident on December 6, 2013. He stated that he was assaulted by “a guy and an accomplice, called Matt” on December 9, 2013, while he was in the kitchen and that he called the police. The Tenant testified that he was spat on twice and hit in his face with force with a packet of salt. The Tenant stated that the man was trying to get him to fight, but that he couldn’t because he is disabled. The Tenant stated that he was pushed into the door frame and fell on the floor, re-injuring his back and bruising his shoulder. The Tenant called the police, but the police told him they couldn’t do anything because the video surveillance wasn’t working and there were no witnesses.

The Tenant submitted that the Landlord “cooks up stuff” against the Tenant. He testified that MC hired a cleaner “Patrick” in August, 2013. The Tenant stated that Patrick doesn’t like him and that he harasses him, standing outside the toilet door and peaking through the door. The Tenant stated that MC told him that Patrick said the Tenant was stuffing things down the toilet. The Tenant denied this and stated that the next day, MC said the problem was solved. The Tenant testified that he received two messages from Patrick, on August 30 at 11:31 a.m. and on September 30 at 3:57 p.m., asking the Tenant, “do you still play with toilet paper” and “how is the toilet paper these days?”

The Tenant stated that the same man who attacked him in the kitchen harassed him 3 times: in the kitchen; on the bus; and on the stairs at the rental property. The Tenant stated that the man called him a “bitch”.

### **Analysis**

The Notice indicates the following reasons for ending the tenancy:

- 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; and
  - put the landlord’s property at significant risk.

In this case, I find that the Landlord has not provided sufficient evidence to support the Notice. MC stated that he had no first-hand knowledge of any of the events. The Landlord did not provide documentation or witness testimony to support the Notice. MC stated that the video surveillance camera was working in the kitchen and that the Tenant is continuing to harass others and stop them from using the kitchen. However,

the Landlord did not provide digital evidence of such behaviour. The Tenant denies all of the allegations.

It is important to note that MC stated that it was a “he said/she said” situation and that he felt the police and now the Residential Tenancy Branch were abdicating their responsibility by not dealing with the Tenant. MC stated that other occupants were threatening to take matters into their own hands and that he would not be responsible for anything that happened to the Tenant. I explained to MC that when a landlord seeks to end a tenancy, **the onus is on the landlord to prove on the balance of probabilities that the tenancy should end for the reasons indicated on the notice to end tenancy**. The landlord must provide its best evidence in support of the Notice. In this case, the Landlord did not provide any documentary or digital evidence to support the Notice.

For the reasons set out above, I find that the Notice is not a valid notice to end the tenancy and it is canceled. The tenancy will continue until it is ended in accordance with the provisions of the Act.

### **Conclusion**

**The Notice to End Tenancy issued December 10, 2013, is cancelled.** The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

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: April 08, 2014

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Residential Tenancy Branch

