



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Trasolini & Eng Construction Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** CNC

### **Introduction**

This Hearing dealt with the Tenant's application filed July 14, 2014, to cancel a *One Month Notice to End Tenancy for Cause* issued July 8, 2014 (the Notice).

The Tenant, Landlord and witnesses gave affirmed testimony at the Hearing.

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 make submissions to me.

There were no issues with respect to service of the Notice of Hearing documents, or exchange of evidence.

### **Issue to be Decided**

- Should the Notice be cancelled?

### **Background and Evidence**

The rental property is an apartment building. This tenancy started in June, 2009. Rent is \$800.00, due on the first day of the month.

#### **The Landlord gave the following testimony:**

The Landlord testified that he served the Tenant with the Notice on July 8, 2014, by posting it to the Tenant's door. He stated that he has no issue with the Tenant, and that he is just "doing my due diligence" because he has had verbal complaints from other occupants in the building (the witnesses). The Landlord stated that he has heard complaints about the Tenant from additional occupants, but has not received any written

complaints. The Landlord testified that in the past, the Tenant was “off-keister” and climbed a telephone pole.

The Landlord’s witness VM gave the following testimony:

VM stated that she and her husband have lived in the rental property for two years. She testified that the Tenant was involved in domestic disputes from time to time, but she let it go. VM stated that on May 18, 2014, the Tenant dumped water up and down the common hallway at 2:00 a.m., waking her up. She said that the Tenant threatened her and another occupant. VM testified that she was frightened of the Tenant and feared for the safety of her 5 year old child. She stated that the Tenant told her that he had been in a war and had killed and was happy to do it again. She called the police, but they didn’t come until 5:30 a.m. and the Tenant had left the building.

The Tenant’s advocate questioned VM about the incident on May 18, 2014. VM stated that the Tenant was yelling and pouring buckets of water in the hallway. VM stated that water was running under her door and that the Tenant was unstable and displaying “crazy behaviour”. The Tenant’s advocate asked VM how the Tenant threatened her. VM stated that the Tenant was yelling at her through her closed door, and that she knew the Tenant was talking to her. The Tenant’s advocate asked VM if she spoke to the police at 5:30 a.m. and VM answered that she didn’t because she was too tired.

VM testified that on May 29, 2014, at 4:00 a.m., she saw two police cars at the rental unit. There were four police officers and the Tenant outside.

VM stated that her father came to see her on July 16, 2014, at 6:30 p.m. She stated that the Tenant was drunk, clutching a bag of beer, and yelling up to her balcony.

The Landlord’s witness TM gave the following testimony:

The witness TM is VM’s husband. He testified that on July 8, 2014, at 1:48 a.m., he was having a smoke on his balcony. The Tenant was in the courtyard with a shovel. TM testified that the Tenant tried to spit at him and said, “You think you’re so cool, I should come up and kill you all.”

The Tenant’s advocate asked TM if he called the police. TM stated that he went inside and got in touch with the Landlord. TM testified that he called the police “a couple of weeks later”.

TM testified that “2 or 3 weeks ago, after the eviction notice”, he filed a complaint with the police for criminal harassment against the Tenant for incidents that occurred since May 18, 2014.

The Tenant gave the following testimony:

The Tenant stated that “people look at me like I’m a scum bag. He stated that he gets upset when people throw butts into the courtyard from their balconies. The Tenant testified that the witness’s balcony is 20 feet away from the courtyard and that he can’t spit that far.

Regarding the balcony incident, the Tenant stated that he found the shovel when he was on the bus and that he took it home with him. He saw “some guy” on the balcony who made a racist remark about him. He stated that this happens a lot. The Tenant testified that 2 or 3 weeks after the witnesses moved in, they started drinking on their balcony.

Regarding the May 18<sup>th</sup> incident, the Tenant acknowledged that he was cleaning the floor at 3:00 a.m. in the morning. He stated that most of the occupants are shift workers and work at night. The Tenant stated that an occupant in another suite came out and said, “Do you know what time it is?”, but that the witnesses didn’t say anything to him. The Tenant stated that he was using an electric floor cleaning machine and that he didn’t use any buckets of water. The Tenant stated that he was at home at 5:30 a.m. and that he didn’t leave the building. He testified that he was not cautioned or interviewed by the police. The Tenant stated that he has never been in a war and has never killed anyone.

The Tenant stated that he is unaware of any police file concerning harassment charges against him and that the police have not contacted him about any complaints.

With respect to the telephone pole incident, the Tenant stated that he drank some beer and got up on a ladder to inspect the cable. He said he didn’t touch any wires and that the incident happened “2/12 to 3 years ago”.

The Tenant stated that he doesn’t know what VM is talking about when she stated that the Tenant was involved in domestic disputes. He stated that the woman living with him is “just a roommate”. The Tenant stated that the rental property is not very sound proof. He stated that sometimes he gets a little loud and shows poor judgment, but that he has had no trouble with anyone else other than the witnesses.

The Tenant testified that he has never been given any copies of written complaints, or been warned by the Landlord.

### **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; and
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or well-being of another occupant or the landlord.

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.

I find that the Landlord has not provided sufficient evidence to support the Notice. The Landlord did not provide any written statements to the Tenant, or provide any evidence that he warned the Tenant about his behaviour before issuing the Notice. The Landlord testified that he had no issues with the Tenant and that he was just doing his “due diligence” when he issued the Notice.

The witness VM testified that she was frightened for her safety, but admitted that she did not speak to the police when they arrived at 5:30 a.m. on May 18, 2014.

The Witness VM's testimony about seeing the Tenant with the police on May 29 is vague and inconclusive.

The July 16 incident occurred after the Notice was issued and therefore is irrelevant to this Notice to End Tenancy.

The witness TM stated that he felt threatened by the Tenant on July 8, 2014; however, he did not call the police until “a couple of weeks later”.

With respect to the witness TM's testimony about a harassment complaint, this also occurred after the Notice was issued. In any event, the Tenant stated that he has not been interviewed by the police with respect to a harassment complaint and the Landlord did not provide any documentary evidence to support that charges have been laid.

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.

I advised the Tenant that I am concerned about his self-proclaimed lack of judgment at times and cautioned him that his tenancy may be in danger if he doesn't respect other occupants' right to peaceful enjoyment.

### **Conclusion**

**The Notice to End Tenancy issued July 8, 2014, is cancelled.** The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant is strongly cautioned that future noise or nuisance complaints may be sufficient reason to end the tenancy.

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 29, 2014

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Residential Tenancy Branch

