



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding The Bloom Group Community Services  
Society and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened in response to an application by the Tenant for an order cancelling a notice to end tenancy pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirms its email address as contained in the Tenant’s application.

### Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

### Background and Evidence

The following are agreed facts: the tenancy started on September 1, 2008. Rent of \$348.00 is payable on the first day of each month. On August 28, 2020 the Landlord served the Tenant with a one month notice to end tenancy for cause (the “Notice”) by leaving the Notice in the mail slot. The Notice contains two reasons with details.

The Landlord states that the primary reason for the Notice involves an incident that occurred on December 15, 2019 and that the other details of noise are not significant enough to warrant an end to the tenancy. The Landlord states that it was informed in writing on December 17, 2019 of the incident by another tenant who was involved in the

incident. The Landlord states that the other tenant was assaulted by the Tenant while in the elevator and that the assault continued with hitting and kicking into the hallway. The Landlord states that the other tenant was scared and was staying in its unit as a result of the incident. The Landlord states that while it has a video of the incident it was only able to upload still shots due to the format of the video. The Landlord states that it saw the video and witnessed the Tenant grabbing, hitting and kicking the other tenant. The Landlord states that it spoke with the Tenant and informed the Tenant at the time that due to its zero-tolerance policy it had to serve the Tenant with a notice to end tenancy. The Landlord states that this original notice was given to the Tenant in February or March 2020. The Landlord states that in speaking with the Tenant about the incident the Landlord was informed that a feud was going on with the other tenant. The Landlord states that while the incident was reported to the police by the other tenant the Landlord does not know of the outcome and did not follow up with the other tenant to find out what occurred with the police. The Landlord states that the file could have been closed without charges. The Landlord states that other than informing the other tenant that the matter was paused due to the emergency order the Landlord had no further discussions with the other tenant. The Landlord states that this original notice was then paused due to the emergency order.

The Tenant states that at the time of the incident the Tenant was under extreme stress. The Tenant provides a medical note of this stress. The medical note sets out that the Tenant is not a danger to itself or anyone else. The Tenant states that for about a year and a half prior to the incident the other tenant had been harassing the Tenant and sending messages to phone of the Tenant's friend calling her adult children and herself names, including racist names. The Tenant states that when the other tenant was seen in the elevator with a large man, the Tenant heard the other tenant mumble something and the Tenant's PTSD kicked in. The Tenant states that the other tenant tried to push the Tenant and thinking that an assault of the Tenant was going to happen the Tenant may have have pushed the other tenant.

The Tenant states that while she did follow the other tenant down the hall there was no punching, kicking or other assaults. The Tenant states that the other tenant is lying about having been left with bruises. The Tenant confirms that the police spoke with her on the day of the incident and that there has since been no further contact by the police. The Tenant states that the man with the other tenant did not want to get involved and did nothing at the time. The Tenant states that since the incident the Tenant has avoided the other tenant “like the plague”.

The Advocate states that at the time of the first notice to end tenancy for cause the Landlord told the Tenant to rip it up and to forget about the notice. The Advocate argues that the Landlord never informed the Tenant that the matter would come back again. Further the Advocate argues that the incident occurred 3 months before the ministerial order restricting landlords from issuing notices to end tenancy and that after the ministerial order the Landlord still had the option to seek an early end of the tenancy for a serious risk. The Advocate argues that the Landlord rescinded the original notice based on the incident and Advocate argues that to now bring this incident back as the basis for the current Notice is unfair to the Tenant and that the Landlord should be stopped from being able to issue the Notice. The Advocate states that the Landlord provides housing to persons with addictions and disabilities, including mental disabilities. The Advocate argues that the most the Landlord should have issued a breach letter and that there were no previous letters given to the Tenant about this incident being a breach.

The Landlord states that the building has a zero policy for physical assault and that the photos show the engagement and assault.

### Analysis

Section 47(1) of the Act provides that A landlord may end a tenancy by giving notice to end the tenancy if

- the tenant or a person permitted on the residential property by the tenant has

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; or
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

The Landlord's photos support that the Tenant at a minimum put her hands on the other tenant in and at the elevator. The Tenant however gives undisputed evidence of verbal provocation while in the elevator with the other tenant and undisputed evidence of ongoing harassment by the other tenant prior to this incident. The Tenant's evidence from the physician report indicates that at the time of the incident the Tenant was under severe stress. Another person was present with the other tenant during the incident however the Landlord provided no evidence from this person. As there is no evidence that the Landlord could not have obtained this witness evidence and given the Tenant's evidence that this person did not want to be involved and did nothing at the time of the incident, I take an adverse inference and consider that this evidence would likely support the Tenant's version of events.

There is no supporting evidence of injury to the other tenant and the Landlord did not respond to the Tenant's evidence of no bruises being left. This tends to lessen the credibility of the other tenant's evidence as contained in its letter. There is no evidence of a crime being determined by the police who did attend and investigate the incident. This is a long-term tenancy with no previous history of any problems with the Tenant and given the medical note I accept that the Tenant is not a danger to herself or anyone else.

Finally, it is undisputed that the Landlord told the Tenant to rip up the original notice based on the same incident as the current Notice and I note that the Landlord only gave evidence of its communication with the other tenant of the plan to revive the matter after the emergency measures were lifted. Given this evidence I find on a balance of probabilities that the Landlord expressly waived its right to issue another notice for the same incident. For this reason and as this was a one-time incident in the context of provocation and ongoing harassment by the other tenant, I find that the Landlord has not substantiated that the Notice is valid for its stated reasons. The Tenant is therefore entitled to its cancellation. The tenancy continues.

### Conclusion

The Notice is cancelled, and the tenancy continues.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 20, 2020

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Residential Tenancy Branch