



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the tenant's application to cancel a *1 Month Notice to End Tenancy for Cause* and recover the cost of the filing fee from the landlord. Both parties appeared at the hearing and were provided the opportunity to be heard and respond to the other party's submissions.

### Issues(s) to be Decided

1. Whether the landlord has established that there are grounds to end the tenancy for cause.
2. Mutual agreement between the parties.
3. Award of the filing fee.

### Background and Evidence

Upon hearing undisputed testimony of the parties, I make the following findings concerning the tenancy. The tenancy commenced in March 2008. The tenant occupies the basement suite and other tenants occupy the upper suite of the two unit residential property. There is no written tenancy agreement. On March 31, 2009 the landlord served the tenant with a *1 Month Notice to End Tenancy for Cause* (the Notice). The Notice indicates that the reason for ending the tenancy is that the tenant, or a person permitted on the property by the tenant, has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified that the Notice was issued because the landlord had received verbal complaints about the tenant approximately two times per month from the tenants occupying the upper rental since December 2008, approximately the time the tenant's

fiancé moved in with the tenant. The landlord testified that the upstairs tenants had complained that the tenants have been disturbed by:

- The tenant and her fiancé are smoking on the property;
- The tenant not attending to her crying baby;
- The tenant's fiancé playing the guitar in the early morning hours; and,
- The tenant and her fiancé can be heard talking and making other noises associated with sexual activity late at night.

The landlord acknowledged that he had not issued any warning letters to the tenant to notify her that the upstairs tenants were being disturbed; however, the landlord testified that he had spoken to the tenant on a couple of occasions. The landlord also testified that he found the tenant's behaviour to be aggressive and that she was difficult to talk to, even going so far as to kick the landlord off the property.

The tenant responded to the landlord's position by stating that the landlord had only talked to her about the noise coming from her crying baby and smoking. The tenant explained that she does tend to her crying baby but he is inconsolable at times when he is teething or ill. The tenant acknowledged that the landlord had asked her not to smoke in the house when her tenancy began and she agreed not to. The tenant explained that she formerly smoked beside the house and that smoke may have entered a window of the upper rental unit but that she and her fiancé now smoke off the property. The tenant testified that her fiancé does have a guitar but that he does not play it late at night as he is in bed at a reasonable hour. The tenant submitted that she can also hear the upstairs tenants talking and making ordinary living noises but that she does not complain about them. The tenant attributed the upstairs tenants' complaints to the upstairs tenants not wanting tenants living downstairs. The tenant claims that the landlord had never talked to her about loud noises from sexual activity before the dispute resolution hearing.

The tenant acknowledged getting defensive in response to allegations the landlord had made against her and that she had suggested the landlord leave the property on one occasion.

During the hearing, suggestions were made to the parties in an effort to resolve their differences, including notifying the tenant in writing of any issues the landlord needs to bring to the tenant's attention and having a meeting with both tenants to sort out their expectations for mutually agreeable conduct on the property. The tenant also agreed that a better response to allegations made against her would be to walk away from the landlord rather than be overly defensive or aggressive. A mutual resolution was facilitated between the parties. In exchange for the tenancy continuing, the landlord requested that additional terms be placed upon the tenant, namely: 1) that there be no smoking anywhere on the property, and 2) that the tenant and other occupants respect quiet hours between 11:00 p.m. and 6:00 a.m. The tenant agreed to the additional terms.

## Analysis

As explained to the parties during the hearing, in order to end a tenancy for unreasonable disturbance and significant interference of other occupants, the landlord has the burden to prove that the tenant's activity has been so disturbing that it warrants an end to the tenancy. This provision stems from the rights of other occupants or the landlord to quiet enjoyment of their living units. Temporary discomfort or inconvenience does not constitute a basis to find a breach of quiet enjoyment. Rather, when the disturbance is related to noise, the noise has to be either very unreasonable or on a persistent basis in order to find a breach of the other tenants' quiet enjoyment. Ordinary sounds of living such as talking or a baby crying is not unreasonable unless excessively loud and on-going.

Often a tenant is not aware they are disturbing another occupant, as I find was the case here. It was suggested to the landlord that the landlord notify the tenant in writing of any future complaints the landlord receives and the nature of the complaints so that the tenant can take corrective action where applicable.

Overall, I found the landlord's case against the tenant was rather weak. As mentioned previously, the landlord has the burden to prove that the tenancy must end because of the tenant's actions. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party with the burden of proof has not met that burden, on a balance of probabilities, and the claim fails. The landlord did not have detailed dates or times or nature of the noise that the upstairs tenants felt was disturbing. The landlord had not provided sufficient evidence that the tenant was made aware of the disturbing behaviour alleged by the upstairs tenants. The landlord did not prepare a written tenancy agreement that stipulated no smoking anywhere on the property. The landlord did not present the upstairs tenants as witnesses for the hearing.

In light of the above, I accept the additional terms agreed to by the parties and make it binding upon them. I record the resolution reached between the parties as follows:

1. The tenant or any other occupant of the rental unit shall not smoke anywhere on the property.
2. The tenant and any other guest or occupant will recognize and will respect quiet hours between 11:00 p.m. and 6 a.m.
3. The tenancy shall continue.

In recognition of the mutual agreement between the parties, I cancel the Notice to End Tenancy with the effect that this tenancy continues.



# Dispute Resolution Services

Page: 5

Residential Tenancy Branch  
Ministry of Housing and Social Development

As I found the landlord's grounds for issuing the Notice to be largely unsupported, I grant the tenant's request to recover the filing fee from the landlord. The tenant is authorized to reduce a subsequent month's rent by a one-time deduction of \$50.00 in recognition of this award.

## Conclusion

The Notice to End Tenancy is cancelled and this tenancy shall continue. The parties have agreed to additional terms as part of their tenancy agreement. The tenant is authorized to reduce a subsequent month's rent by \$50.00 in order to recover the filing fee paid for this application.

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 30, 2009.

---

Dispute Resolution Officer