



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking an order cancelling the Notice to End Tenancy for Cause and to recover the filing fee.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Are the Tenants entitled to an order cancelling the Notice to End Tenancy and to recover the filing fee?

### Background and Evidence

Although I heard there is a written tenancy agreement, it was not submitted into evidence. I heard testimony that this one year, fixed term tenancy began in March 15, 2011, monthly rent is \$1,095.00 and the Tenants paid a security deposit of \$547.50 and a pet damage deposit of \$200.00 on March 14, 2011.

Although neither party submitted the document into evidence, I heard testimony that the Landlord issued the Tenants a 1 Month Notice to End Tenancy for Cause (the "Notice") on May 16, 2011, with a stated move out date of June 30, 2011. Although neither party was clear what cause was listed on the Notice, I heard testimony that the Notice alleged the Tenants seriously jeopardized the health or safety or lawful right of another occupant or the Landlord and a handwritten notation, citing "police attended."

According to the Rules of Procedure, the Landlord testified first to support the causes listed on the Notice.

The Landlord testified that she had been receiving numerous verbal complaints from the Tenants' neighbours about the Tenants since they moved in.

The Landlord testified that the Tenants had a loud party on May 14, with many people attending, which did not end until approximately 5:00 a.m. on May 15, 2011. The Landlord stated that she was informed that there was excessive drinking and smoking inside the rental unit during the party.

The Landlord stated that on May 16, 2011, she issued the Tenants the Notice as a result of several telephonic complaints from adjoining neighbours.

The Landlord submitted that the male Tenant, after receiving the Notice, phoned her and was quite angry. The Landlord stated that the male Tenant attended her office afterwards to apologize, but she was not there. The Landlord submitted that the Tenant was rude and aggressive and has informed the Tenants she will not speak to them.

The Landlord stated that after receiving the Notice, the Tenants had another party on May 20, 2011.

Upon query, the Landlord submitted that she has had no conversations or communication with the Tenants about the noise complaints and did not address the May 14-15 party prior to issuing the Notice, or since issuing the Notice.

The Landlord submitted into evidence four written complaints from the Tenants' neighbours to the Residential Tenancy Branch; however the Landlord testified that she submitted only one of the complaints to the Tenants as those tenants expressed to her they did not want their names revealed to the Tenants.

The Landlord submitted photos of the Tenants' deck, porch and outside area, some appearing to be taken at close range. Upon query, the Landlord stated that she stood on the outside taking the pictures, some from the steps.

The Tenant submitted that they have had no communication from the Landlord and were not aware of any complaints she had received. The Tenant stated she did not know why the Tenants were issued the Notice, again as she has had no contact from the Landlord.

The Tenant submitted that they did have a party, but that they had informed their neighbours ahead of time and she did not believe the noise to be excessive.

### Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find the Landlord's 1 Month Notice to End Tenancy for Cause to be unsubstantiated and not supported by the evidence.

After considering all of the written and oral evidence submitted at this hearing, as I advised the parties at the hearing, I find that the Landlord has provided insufficient evidence to show that the Tenants significantly interfered with or unreasonably disturbed another occupant or the landlord. In reaching this conclusion I was influenced by the Landlord's testimony that she never discussed or mentioned to the Tenants that she, the Landlord, had received complaints or that there were any issues regarding their tenancy.

I also considered that the Landlord served only one of the written complaints to the Tenants as evidence, and not the four submitted to the Residential Tenancy Branch. Section 4.1 of the Residential Tenancy Branch Rules of Procedure states that if a respondent, the Landlord in this case, intends to rely on documentary evidence, this evidence must be served on the applicants as soon as possible and at least five (5) days before the dispute resolution proceeding.

The rules of administrative fair play and natural justice, as well as the Rules of Procedure, require that the Tenants know of the alleged charges against them which gave rise to the Notice being issued and have a chance to respond or correct the alleged behaviour. As the Landlord has neither discussed the complaints nor served the complaints on the Tenants, I find the Landlord has submitted insufficient evidence to support that Notice and therefore has no force and effect. I **order** that the Notice be cancelled.

As the Tenants have been successful with their application, I find the Tenants are entitled to the filing fee of \$50.00. I allow the Tenants to deduct \$50.00 from a future month's rent payment in satisfaction of the monetary claim.

In the event the tenancy ends prior to the satisfaction of the monetary claim, I grant the Tenants a monetary order in the amount of \$50.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The Landlord submitted photographs of the Tenants rental unit and possessions, which I find appeared to be at close range. The Landlord is reminded of Section 28 of the Residential Tenancy Act, which gives the Tenants the right to quiet enjoyment of their rental unit, including the right to reasonable privacy.

### Conclusion

The Landlord's 1 Month Notice to End Tenancy is not valid and not supported by the evidence; therefore the Tenants are granted an order dismissing the Notice to End Tenancy.

The Tenants are allowed to deduct \$50.00 from a future month's rent payment in satisfaction of their monetary claim.

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: June 10, 2011.

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Residential Tenancy Branch