



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to cancel a notice to end tenancy for cause and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail. The Landlord confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Has a 1 Month Notice to End Tenancy for Cause been issued and served in accordance with the *Residential Tenancy Act*?
2. If so, has the Landlord met the burden of proof to uphold the 1 Month Notice?

### Background and Evidence

I heard undisputed testimony that the parties entered into a written tenancy agreement which began on December 31, 2005. The current monthly rent is due on the first of each month in the amount of \$1,275.00. On January 5, 2006 the Tenants paid \$638.00 as the security deposit.

The Landlord testified the 1 Month Notice was issued at the request of the owner of the property who informed the Landlord that he was tired of being harassed by neighbours of the rental property. The Landlord clarified that the owner does not like to be contacted about the rental property and neighbours who are not their tenants have been contacting the owner via letter, telephone, and in person to lodge complaints about the

Tenants. The owner was very upset when he contacted the Landlord and demanded that the Landlord issue the Tenants an eviction notice. As a result a 1 Month Notice was sent to the Tenants via registered mail on May 15, 2011.

The Landlord referred to his evidence where he had grouped his documents into the years of 2009, 2010, and 2011. These documents consisted primarily of complaints from two neighbors to the rental property which began in September 2009. He stated that the complaints calmed down at the end of 2010 and beginning of 2011. Then they seemed to start up again.

I asked if warning letters had been issued to the Tenant about the complaints and the Landlord confirmed that he had sent the Tenants copies of the complaints received from the neighbour but that this was after the 1 Month Notice was issued. He confirmed that he spoke with the Tenants on a continual basis keeping them informed of the complaints.

The Landlord clarified that the complaints are coming primarily from two neighbours who have circulated a petition in the neighbourhood. When he spoke with two of the people who signed the petition he found out that one was misled as to what they were signing, as they thought it was about making sure the neighbourhood was more family friendly. The other person is the owner of the property where the most complaints come from. She lives a few blocks away and it is her occupants that seem to be the main complainers.

The Landlord stated that there was no question that there had been problems in the past. He stated that the Tenants were unable to keep their friends in control which is 90% of the noise factor. Recently the Landlord has been called at 11:00 p.m., 1:00 a.m. and around 2:00 a.m. and each time he has driven to the rental property only to find out there was no noise coming from the rental unit at all. He confirmed that it takes approximately 15 minutes to get to the rental property from his place. These neighbours who are making the complaints are now issuing complaints about him.

The Tenant testified that this is a case of harassment from two neighbours who are friends. One neighbour lives in front of them and the other behind. He confirmed that there was a noise issue about two years ago when these neighbours first moved into the neighbourhood as he had large speakers in the front yard and then the back yard and he used to entertain in his yard. Since then he has moved his entertaining to mostly inside the house. He stated that at present these are not legitimate complaints.

He confirms that other neighbours were misled when told what the petition was for. These complaining neighbours have become vindictive and this has now reached the point where they are harassing him, the owner, and the Landlord. All of their complaints to the police have been unfounded. There have been so many complaints that he is beginning to know the police by name. The police have even advised him to seek civil action which he is currently working on and has the Landlord's permission to include him with his civil dispute.

The Landlord and Agent had nothing further to add.

### Analysis

I have carefully considered the aforementioned and the volumes of documentary evidence submitted by the Landlord.

The reasons selected on the 1 Month Notice are:

- Tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed 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 physical well-being of another occupant or the landlord
- Tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord

The evidence supports the owner demanded this Notice to end tenancy be issued to the Tenants because the owner is being harassed by people who are not occupants, tenants, or guests of the Tenants. Furthermore these people are turning their complaints towards the Landlord and Agent to which the Landlord stated he is finding to be harassing.

The *Residential Tenancy Act* governs matters pertaining to residential tenancies, that is to say matters governing landlords and tenants. Therefore I find the matter being disputed pertaining to the citizens who are lodging these complaints does not fall under the *Residential Tenancy Act*. The applicant Tenants and respondent Landlords are at liberty to seek remedy on this matter in the proper forum.

As per the aforementioned and upon review of the 1 Month Notice to End Tenancy issued for cause on May 10, 2011, I find that the Notice was served upon the Tenants in a manner that complies with the Act however I find the Notice not to be completed in accordance with the requirements of the Act as this matter does not pertain to issues stemming from the Tenants, their guests or other occupants actions. Therefore I cancel the 1 Month Notice to End Tenancy issued May 10, 2011.

The Tenants have been successful with their application, therefore I award recovery of the \$50.00 filing fee.

Conclusion

The 1 Month Notice to End Tenancy issued for cause dated May 10, 2011 is HEREBY CANCELLED and is of no force or effect.

The Tenants may reduce their next rent payment by **\$50.00** as recovery of the onetime award to recovery their filing fee.

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 15, 2011.

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Residential Tenancy Branch