



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, RP, FF

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking orders to cancel a one month Notice to End Tenancy for cause, for the Landlords to comply with the Act, for the Landlords to make repairs to the rental unit and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and 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.

At the outset of the hearing the Tenant could not explain why she included requests for orders for the Landlords to comply with the Act or for the Landlords to make repairs to the rental unit. Therefore, I dismiss those claims without leave.

### Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?

### Background and Evidence

This tenancy began approximately nine years ago. Rent is payable on the first day of the month. Neither party provided a copy of a written tenancy agreement in evidence. The rental building consists of an up and down duplex, with the Tenant in possession of the upper unit and other renters in the lower unit.

On August 1, 2011, the Landlords issued the Tenant a one month Notice to End Tenancy for the alleged cause that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord (the "Notice").

The Notice contains an effective date of September 1, 2011. I explained to the parties during the hearing that this effective date was incorrect, and it automatically corrected to September 30, 2011, through operation of section 53 of the Act.

Pursuant to the rules of procedure, the Landlords proceeded first in the hearing to explain why the Notice had been issued.

The male Landlord testified that at the outset of the tenancy, the female Landlord and the Tenant were friends, but the friendship had soured in recent years.

The male Landlord testified that over the past four years the Tenant has had more and more disagreements with the respective renters in the lower unit. He alleged that the last two different renters vacated the lower rental unit due to the Tenant upstairs. He is concerned because the Landlords now have to caution potential renters in the lower unit about not making any noise to disturb the Tenant upstairs.

The Landlords wanted to give the Tenant an opportunity to agree to a mutual end of tenancy to have a certain date when the tenancy would end. The Landlords were willing to negotiate an end to the tenancy in two or three months, as the Tenant had informed them she was looking for a different rental unit. Regardless, the Tenant would not commit to a date to end the tenancy.

In evidence the Landlords provided a note from the most recent renters who vacated the lower rental unit. The note includes a statement that, "We are leaving because of ongoing problems with the lady upstairs."

In reply, the Tenant submitted a different note which she had drafted and was ostensibly signed by same recent renters, which states in part, "... there were a few problems during the 1<sup>st</sup> month or two of their tenancy downstairs when it was just a matter of getting used to one another. I have had no problems since nor have they with me."

The Tenant further alleged that the renters agreed with the Landlords to write a note complaining about the Tenant in exchange for the Landlords forgiving a \$500.00 fine for breaking the lease.

The Tenant testified she had more complaints about the renters below her, than they did about her.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Notice must be cancelled.

The onus to prove the Notice was valid was on the Landlords. I find the Landlords had insufficient evidence that the Tenant had unreasonably disturbed the occupants of the lower rental unit. Aside from the note from the vacating renters, which the Tenant contradicted with another note signed by the same renters, there were no other written complaints from past or current renters in evidence.

It is clear that the tenancy relationship between the parties has suffered some deterioration. Nevertheless, the tenancy will continue until ended in accordance with the Act.

Therefore, **I order that the one month Notice to End Tenancy issued on August 1, 2011, to the Tenant is cancelled and is of no force or effect.**

The Tenant may recover her filing fee for the Application by deducting \$50.00 from her next rent payment.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: September 12, 2011.

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Residential Tenancy Branch