



# 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 was convened by way of conference call in response to an application made by the tenant for an order cancelling a notice to end tenancy for cause; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order that the landlord make repairs to the unit, site or property; and to recover the filing fee from the landlord for the cost of this application.

The hearing did not conclude on October 21, 2011 and was adjourned for continuation to October 24, 2011. On October 21, 2011, the tenant attended the conference call and called a witness. The landlord did not attend, but was represented by an agent. The parties and the witness each gave affirmed testimony and the parties were given an opportunity to cross examine each other and the witness on the testimony. On October 24, 2011, the tenant and the tenant's witness attended and provided affirmed testimony; the landlord attended, gave affirmed testimony and was given the opportunity to cross examine the tenant and the witness, however the landlord's agent did not attend.

The landlord and the tenant provided evidence in advance of the hearing that was not submitted to each other or to the Residential Tenancy Branch within the time allowed by the Residential Tenancy Act or the Rules of Procedure. The parties did not agree that the late evidence be included. Therefore, the late evidence of both parties is not considered in this Decision. All other evidence and testimony provided have been reviewed and are considered in this Decision.

### Issue(s) to be Decided

- Is the tenant entitled to an order cancelling a notice to end tenancy for cause?
- Is the tenant entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to an order that the landlord make repairs to the unit, site or property?

### Background and Evidence

The parties agree that this month-to-month tenancy began on May 15, 2008 and the tenant still resides in the rental unit. Rent in the amount of \$1,250.00 per month is payable in advance on the 1<sup>st</sup> day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$625.00. The rental unit is the upper level of a house which also contains a basement suite occupied by other tenants.

The landlord's agent testified that the landlord has received noise volume complaints from the tenants in the basement suite complaining about the tenant yelling at the tenant's children over the years. The agent also testified that another tenant in the basement suite moved out at the end of September, 2011 after having told the landlord several times that the tenant yells at children several times per day, every day and in the middle of the night. The tenant in the basement suite was only there for 6 weeks.

The landlord issued a 1 Month Notice to End Tenancy for Cause, a copy of which was provided in advance of the hearing. The notice is dated September 17, 2011 and contains an expected date of vacancy of October 31, 2011. The notice also states 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, and the 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.

The landlord's agent also testified that the tenant has engaged in illegal activity, being the noise which affects the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, and referred to Residential Tenancy Policy Guideline 32.

The tenant testified that the landlord has never raised noise concerns with the tenant. Further, the tenant's children were away visiting family members on all of the following dates:

- August 1 to 11, 2011
- August 16 to 18, 2011
- August 20 and 21, 2011
- August 23 to 25, 2011
- August 27 to 29, 2011
- September 1 and 2, 2011
- September 3 and 4, 2011
- September 17 & 18, 2011

- September 22 to 24, 2011
- October 1 and 2, 2011, and
- October 8 to 11, 2011

Therefore, it would not be possible for the tenant in the basement suite to complain about yelling at children during those dates, and certainly not daily.

The tenant also testified that the utilities are all in the name of the tenant and the tenant is supposed to pay 2/3 of the utilities, and the other third is to be paid to the tenant by the tenants in the basement suite, but this has never happened. The tenant asked for the money, but the tenant in the basement suite refused to pay it. Further, when the tenant asked the landlord about it, the landlord responded that the tenant downstairs has utilities built into the rent. The tenant feels that the noise complaint was prompted by asking the downstairs tenant for utilities money.

The tenant's witness testified that the tenant paid hydro for 3 ½ years and had requested a billing history. The history showed 8 lines for the year 2010, and showed that the tenant had paid \$1,040.06. The tenant is on an equal payment plan for gas at \$116.00 per month. Using those figures as averages over the 3 ½ year tenancy, and when one does the math, the tenant ought to be reimbursed the sum of \$3,444.00.

The tenant was paying \$1,250.00 per month for rent until January 1, 2010 when the rent was reduced to \$1,170.00 to compensate for utilities. The rent went back up to \$1,250.00 per month commencing July 1, 2011 and the tenant is still paying all utilities. The tenant also testified that between day 1 of this hearing and day 2, the landlord has told the tenant that the landlord will simply give the tenant a 2 Month Notice to End Tenancy for Landlord's Use of Property and the tenant will have to move whether or not the tenant is successful at this hearing.

During the course of the hearing, the parties agreed to settle the majority of this dispute on the following conditions:

1. Rent is set at \$1,250.00 per month;
2. The landlord will put the utilities in the landlord's name and then deliver copies of the bills to the tenants, and this tenant will pay the landlord 2/3 of the bills;
3. The parties will meet on October 28, 2011 to discuss repairs required;
4. The landlord will reimburse the tenant the sum of \$320.00 to compensate the tenant for utilities that the tenant downstairs ought to have paid for July, August, September and October, 2011.

### Analysis

With respect to the notice to end tenancy issued by the landlord, I find that the landlord has failed to establish any disturbances caused by this tenant. The landlord's agent testified that a tenant moved out at the end of September, 2011 after 6 weeks of residing in the basement suite due to the noise in the upper unit and yelling at children. However, that testimony is in dispute by the tenant who stated that the children were not even in the rental unit for much of the time that the downstairs tenant resided there.

I further find that the landlord has misinterpreted the Residential Tenancy Branch Policy Guideline 32 on illegal activities. The guideline does not say that it is illegal to cause damage to the landlord's property, or that it is illegal to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, or that it is illegal to jeopardize a lawful right or interest of another occupant or the landlord. The guideline states that if a tenant engages in illegal activity, and that activity causes damage, or affects the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, or if that illegal activity jeopardizes a lawful right or interest of another occupant or the landlord, the landlord may issue a notice to end the tenancy. In this case, I find that the landlord has failed to establish any illegal activity.

The tenant's application for an order cancelling a notice to end tenancy is hereby allowed. The tenant's application for a monetary order is hereby allowed at \$320.00. The tenant is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

### Conclusion

For the reasons set out above, the notice to end tenancy is hereby cancelled.

I further order that the tenant be permitted to deduct \$370.00 from a future rent payment.

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: October 24, 2011.

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Residential Tenancy Branch