



# 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 an application by the tenant to cancel a notice to end tenancy for cause and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

### Background and Evidence

This tenancy began January 2011.

On November 1, 2011 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause:

- The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The tenant testified that over the past few months there have been issues between her and the downstairs tenants regarding noise. The tenant stated that she is not unusually noisy and does not have a clear idea as to when the downstairs tenant finds the noise too much. The tenant stated that she, the landlord and the downstairs tenant had a house meeting where it was agreed that the downstairs tenant would call her if it was noisy however the downstairs tenant is instead resorting to banging on his ceiling. The tenant stated that the downstairs tenant has also turned off their electricity in the past when he was upset about the noise.

The landlord testified that the relationship between the tenants, for whatever reason, has deteriorated to the point where it is not viable for the tenant to remain living in the rental unit. The landlord acknowledged that the parties involved had held a house meeting and discussed how to move forward but as the downstairs tenant was again resorting to banging on his ceiling, the landlord would speak to him again.

The landlord stated that he did not believe it was completely clear who was responsible for the noise disruptions and that the personal relationship between the two tenants had a lot to do with the situation. The landlord stated that he has lived both upstairs and downstairs in the rental unit and that there is some noise transference but not typically more than one would expect.

The tenant stated that she did not want to continue to stay in the tenancy due to the circumstances but that with her 6 year old in a local school and the holidays coming up, she could not possibly move by the end of December 2011. The tenant agreed that vacating by the rental unit January 31, 2012 would be manageable.

**The tenant and landlord agreed to mutually end the tenancy January 31, 2012.**

The tenant acknowledged that she would need to make concerted efforts through the next 2 months to help keep the peace with her downstairs neighbour and the landlord stated that he would work with both tenants in this regard.

Analysis

Based on the documentary evidence and testimony of the parties I find that there is insufficient evidence to uphold the Notice to End Tenancy for Cause. The landlord acknowledged that there are personal issues between the upstairs and downstairs tenants and that he was not 100% sure on who was responsible for the allegations of noise.

As there is not sufficient evidence that the tenant is disturbing the peace and quiet enjoyment of the downstairs tenant, the notice to end tenancy is hereby set aside and the tenancy continues in full force and effect.

The tenant stated that she would agree to mutually end the tenancy on January 31, 2012 and the landlord was willing to accept the tenants offer.

As the tenant has been successful in their application the tenant is entitled to recovery of the \$50.00 filing fee.

Conclusion

The landlord's 1 Month Notice to End Tenancy for Cause dated November 1, 2011 is hereby set aside with the result that the tenancy continues uninterrupted.

**The tenant and landlord have agreed to mutually end the tenancy January 31, 2012.**

The tenant may deduct \$50.00 from future rent owed to the landlord for recover of the filing fee paid to bring their application forward.

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: November 28, 2011.

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Residential Tenancy Branch