



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      RP, CNC, RR, OLC, MNDC, FF

### Introduction

This hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice"), for a Monetary Order for damage or loss under the *Residential Tenancy Act* (the "Act"), regulations or tenancy agreement; and for Orders for compliance, repairs, and authorization to reduce rent. The tenant also applied to recover his filing fee.

The tenant and the landlord's agents appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to respond each to the other party, and make submissions to me.

As a **preliminary issue**, I have determined that the portion of the tenant's application dealing with a request for orders for the landlord's compliance with the *Residential Tenancy Act*, requiring the landlord to make repairs, reducing the rent and a monetary order for damage or loss are unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant's Application and dismissed that portion of the tenant's request for those orders, **with leave to reapply**.

The hearing proceeded only upon the tenant's application to cancel a Notice to End Tenancy for Cause.

### Issue(s) to be Decided

1. Has the landlord proven sufficient cause to end the tenancy?
2. Is the tenant entitled to recover the filing fee?

### Background and Evidence

This one year, fixed term tenancy began on January 1, 2010, continues now on a month to month basis, monthly rent started at \$1,750.00 and is currently \$1,840.00, and the tenant paid a security deposit of \$875.00 at the start of the tenancy, said deposit being transferred from another rental unit on the residential property.

The tenant has been living in the residential property since 2003. The residential property has 16 floors, and the tenant lives on the 9<sup>th</sup> floor.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause (the "Notice"). The Notice was dated November 3, 2011, was delivered via personal delivery on that date, listing an effective end of tenancy on December 31, 2011.

The causes as stated on the Notice alleged that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord and breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord submitted evidence which included a copy of the Notice, the tenancy agreement, email communication between the parties from 2010, other communication between the parties from 2010, a letter from landlord's agent, TC, in reference to an encounter between agent JC and the tenant, which mentioned the alleged behaviour of the tenant was in violation of a term in the tenancy agreement, an email from the tenant to the resident managers concerning a noise complaint, dated March 29, 2011, a response from the agent, dated March 30, 2011, an email from the tenant to the agent, dated March 30, 2011, stating that the noise problem continued, email communication between the landlord's staff and the property manager which described a telephone conversation with the tenant, email communication dated July 26 and 27, 2011, from the tenant to the property manager, a memo documenting a phone call from the tenant to the property manager's office, a letter from the tenant, dated November 3, 2011, requesting the landlord address the noise from the upper floors and photos showing the layout of the resident managers' home.

I heard testimony that the office of the residential property is located on the first floor and the resident managers' home is in the next unit, not connecting. The resident managers' first door leads to a foyer, with another door leading into their main living area.

**In support of the Notice, landlord's agent, JC, testified to the following:**

On November 3, 2011, the tenant approached her as she was coming out of her office while on the phone with a potential tenant. The agent informed the tenant that she could not talk to him as she was speaking on the phone. The tenant, despite this, demanded to talk to her immediately.

The agent walked to her home, next door, and closed the door to her main living area. The tenant pounded on the door incessantly, which caused the agent to suspect something had happened to her husband, agent TC. When she opened the door, the tenant appeared angry and thrust a piece of paper at her, which frightened the agent.

Agent TC stated that after consulting with the property manager, a decision was reached that a Notice to end the tenancy should be issued as the resident manager felt threatened by the tenant and further, the tenant was trespassing on the resident managers' property.

Upon query agent TC stated that he had not witnessed the occurrence of November 3, 2011. Although the agent called the police, it was to ensure that delivery of the Notice was problem-free, not due to the incident in question.

Landlord's agent, OG, stated that he agreed a Notice should be issued due to the progressive trend in the tenant's behaviour and as he was responsible for the safety of his employees.

**In response, the tenant testified to the following:**

The tenant denied a progressive trend in his behaviour; however he has been frustrated with the resident managers' alleged lack of action on his initial complaint in March 2011, regarding the noise from upper floors.

The tenant had periodically addressed the noise complaint with the resident managers and the property manager, but had no success.

The rendition of agent JC's account of the incident of November 3, 2011, was highly inaccurate.

Prior to phoning agent JC, the tenant phoned agent OG concerning the noise complaint, and was "brushed-off." Thereafter he phoned agent JC, who stated "I don't have time for you" and hung up.

The tenant composed a written complaint to take to the office, which he did on November 3, 2011. The agent JC, who was coming out of her office, would not talk to him. The tenant did not trespass on the resident managers' property, as he went through the foyer, but not the inner door, which was open.

The tenant admitted raising his voice, but was frustrated that the resident managers and the property manager had not talked to him that day.

The tenant denied approaching the agent in a threatening manner and frightening her.

In support of his application, the tenant's relevant evidence included statements from other tenants in the residential property, a letter dated November 1, 2011 to the landlord, the letter of November 3, 2011, the same emails and communication between the parties, and additional emails from the tenant, dated July 24 and 26, 2011.

I note both parties submitted a significant amount of evidence; however a substantial portion of the evidence pertained to the other issues listed in the tenant's application

and were not considered or addressed for the purposes of deciding the main issue of the Notice.

### Analysis

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

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.

Once the tenant made an Application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

In this instance, the burden of proof is on the landlord to prove the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord and breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord or significantly interfered with or unreasonably disturbed another occupant or the landlord.

In reaching this conclusion I find the landlord failed to produce any compelling or persuasive evidence which would lead me to conclude the landlord proved the causes listed on the Notice. While I do not doubt some references concerning the resident managers by the tenant to the property manager caused the resident managers some unease, I do not find that the communication itself proved the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Having said that, the testimony of the landlord upon query suggested that the Notice was issued as a result of the incident of November 3, 2011, with only the tenant and agent JC present, not for any other incident or reasons.

I therefore find the main component of the landlord's evidence surrounding this incident was disputed verbal testimony.

I find that, in any dispute when the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof cannot prevail on the balance of probabilities. Therefore it is not necessary for me to determine credibility or assess

which set of “facts” is more believable because disputed oral testimony does not sufficiently meet the burden of proof.

Additionally the landlord failed to produce any evidence that the tenant was issued a written notice to correct a breach of a material term of the tenancy agreement as the letter of February 18<sup>th</sup>, 2011 was simply an allegation that the tenant was in contravention of a paragraph in the tenancy agreement.

I therefore find that the landlord has submitted insufficient proof to establish the causes listed on the Notice.

### Conclusion

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause dated and issued November 3, 2011, is not valid and not supported by the evidence, and therefore has no force and effect. **I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.**

As the tenant was successful with his application, I allow the tenant recovery of the filing fee. The tenant may deduct \$100.00 from his next or a future monthly rent payment in satisfaction of the monetary claim.

The portion of the tenant's application dealing with a request for orders for the landlord's compliance with the *Residential Tenancy Act*, requiring the landlord to make repairs, reducing the rent and a monetary order for damage or loss has been severed and dismissed, with leave to reapply.

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: December 02, 2011.

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Residential Tenancy Branch