



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, FF

### Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the Tenant requesting that a Two Month Notice to End Tenancy be cancelled and reimbursement for the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

Should the Two Month Notice to End Tenancy be cancelled?

### Background and Evidence

The parties agree that they have a tenancy agreement which started October 2009, which is currently a month to month tenancy with a rent of \$1,400.00 per month due on the first of each month. The parties agree that a security deposit of \$700.00 was paid by the Tenant when the tenancy commenced. The parties did not submit a copy of the tenancy agreement into evidence. The parties agree that the Landlord resides in the upper part of the house and the Tenant rents the basement suite below. The parties agree that they do not share a kitchen or a bathroom.

The parties agree that the Landlord delivered a Two Month Notice to End the Tenancy to the Tenant in the mailbox at the rental unit on January 04, 2012. The Two Month Notice to End Tenancy states that the Landlord’s reason for issuance is, “due to the noise the landlord has made that affected the quiet enjoyment to the tenant”. The Tenant filed an Application to dispute the Notice on January 12, 2012.

The Landlord stated that the Tenant had complained to her in August 2011 about day to day living noises that she makes in the house. The Landlord stated that she works the late shift and when she comes home the Tenant can hear cooking, washing and showering as the pipes are old and the walls are thin. The Landlord stated that the Tenant can also see her gardening and working around the property. The Landlord stated that the living situation makes her nervous and she would like the tenancy to end.

The Landlord stated that in the future she may have a relative from overseas move into the rental unit, but that no arrangements had been made for this at this time.

The Tenant stated that he has not made any formal noise complaints to the Landlord in writing or otherwise. The Tenant stated that before moving into the rental unit the Landlord explained that the walls were paper thin, but he accepted the tenancy anyways and moved in. The Tenant does not wish to move out and states that the Landlord has also told him that she is contemplating having a family member immigrate and move in sometime in the future. The Tenant stated that the reason for issuing the Notice, due to noise from the Landlord, is false and is not a sufficient reason to provide a Two Month Notice to End Tenancy. The Tenant requests that the Two Month Notice to End Tenancy be cancelled.

### Analysis

I have considered all relevant testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the parties' evidence that the Tenant was served in his mail box with the Two Month Notice to End Tenancy for Cause on January 12, 2012 and the Tenant filed an Application to dispute the Notice within the timeframes allowed by the Act.

I find that the Two Month Notice to End Tenancy for Cause was not issued in accordance with the Act and Policy Guideline. The Landlord did not provide one of the reasons allowed by section 49 of the Act, which are listed on page two of the Notice. The Landlord stated instead in handwriting on the back of the Notice that her reason for issuing it, and wanting to end the tenancy, was "due to the noise the landlord has made that affected the quiet enjoyment to the tenant".

Based on the above-mentioned reasons, I order that the Two Month Notice to End Tenancy, served on January 12, 2012, be cancelled.

As the Tenant has been successful in his Application, I order the Tenant to recover the \$50.00 filing fee for this proceeding by deducting it from his next rent payment due, so that the Tenant only pays \$1,350.00 for that month.

### Conclusion

I have granted the Tenant's request to cancel the Two Month Notice to End Tenancy.

I have granted the Tenant's request to recover the \$50.00 cost of the Application fee, and ordered him to deduct it from his next month's rent.

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: January 31, 2012.

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Residential Tenancy Branch