



# 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 the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared at the hearing 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.

On a procedural note, the landlord appeared at the hearing approximately six minutes after it started. I summarized the information I had heard to that point from the tenant and permitted the landlord to respond to that information before proceeding further.

### Issue(s) to be Decided

Should the Notice to End Tenancy be upheld or cancelled?

### Background and Evidence

The parties provided consistent testimony that the tenancy commenced in September 2011 and the monthly rent of \$350.00 is due on the 6<sup>th</sup> day of every month. The tenant paid a \$200.00 security deposit to the landlord at the beginning the tenancy.

I heard that the rental unit is a room located in the basement. The basement has three bedroom and two bathrooms. The living area and the kitchen in the basement are for the shared use of the tenants that occupy the rooms in the basement. The landlord has a separate kitchen and bathroom upstairs.

On December 12, 2011 the landlord issued the tenant a 1 Month Notice to End Tenancy for Cause (the Notice) with an effective date of February 6, 2012. The tenant filed to dispute the Notice within the time limit required under the Act.

The reasons indicated on the Notice are:

- Tenant is repeatedly late paying rent; and,
- Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

With respect to repeated late payment of rent, the landlord submitted that the tenant was late paying rent for the months of October and November 2011. The tenant submitted that he was late paying rent for the month of November 2011 only.

With respect to significant interference or unreasonable disturbances by the tenant, the parties made the following submissions:

	<u>Landlord's submissions</u>	<u>Tenant's responses</u>
2.	The tenant does not use the cooking fan and causes cooking smells to permeate the house.	Tenant did not use fan on one occasion to avoid making too much noise. A second time the landlord complained when the tenant was cooking bean sprouts which does not smell.
3.	The tenant is noise sensitive. The tenant asked the landlord to walk upstairs more softly and the banged on the walls when the landlord played the piano.	The tenant never banged on the walls.

The tenant provided a copy of the tenancy agreement. It is one page written in Korean which the tenant translated into English. The tenancy agreement indicates the residential address, amount of monthly rent, the date rent is due, the amount of the security deposit, and when the tenancy commenced.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

With respect to repeated late payment of rent, Residential Policy Guideline 38 provides that a minimum of three late payments are required in order to justify ending the

tenancy for this reason. As the tenant has not paid rent late three or more times there is insufficient reason to end the tenancy for repeated late payment of rent.

With respect to significant interference or unreasonable disturbance of other occupants or the landlord I find as follows:

1. The landlord has not satisfied me that the tenant is precluded from using the other bathroom located in the basement or that it disturbed the other tenant, who was out of town, when the landlord caught the tenant using it.
2. Cooking smells are to be expected from normal living activities, especially in a situation where the basement kitchen is not completely separate from the landlord's living area. Ideally, a person would use a fan if the cooking activity generates strong smells, smoke or steam. However, failure to use a fan when cooking on two occasions is not a sufficient basis to find the tenant is unreasonably disturbing other occupants. If the landlord is bothered by cooking smells the landlord may want to consider providing greater separation between the kitchen in the basement and the landlord's living area.
3. The disputed testimony that the tenant bangs on the wall does not satisfy me that the tenant has engaged in such activity. Further, asking the landlord to be mindful of the noise level is not a basis to find the tenant is unreasonably disturbing the landlord.

In light of the above, I cancel the Notice to End Tenancy as I found it to be largely without merit. I also find it appropriate to caution the landlord that under the Act the tenant is entitled to quiet enjoyment of the rental unit and common areas which includes reasonable privacy and freedom from significant interference from the landlord.

I encourage the parties to try to work out these "housekeeping" issues and act respectfully towards each other.

As the tenant was successful in this application I award the filing fee to the tenant. The tenant is authorized to deduct \$50.00 from a subsequent month's rent in satisfaction of this award.

As an aside, I pointed out to the parties that payment of a \$200.00 security deposit violates section 19 the Act and that the maximum the landlord was entitled to collect was one-half month's rent, or \$175.00. Under the Act, the tenant is entitled to withhold any overpaid portion of the security deposit from rent otherwise payable.

Conclusion

The Notice to End Tenancy has been cancelled and the tenancy continues.

The tenant has been awarded the filing fee and may deduct \$50.00 from a subsequent month's rent in satisfaction of this award.

The tenant has overpaid the security deposit by \$25.00 and is entitled to withhold this overpayment from rent otherwise payable to the landlord.

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 05, 2012.

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Residential Tenancy Branch