



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a one month notice to end tenancy for cause.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The tenant has applied to cancel a one month notice to end tenancy for cause issued on January 27, 2012, the effective date in the Notice is March 1, 2012. In a case where a tenant has applied to cancel a notice for cause, Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence and submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

### Preliminary issue

The landlord testified that there are two issues for issuing the one month notice to end tenancy for cause issued on January 27, 2012. The first issue is that the tenant has not provided financial information that has been requested and no longer qualified for subsidy housing and the second issue is the tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

Filed in evidence is a copy of the one month notice to end tenancy for cause dated January 27, 2012. The reason stated in the notice is that the tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord has not filed or served a two month to end tenancy because the tenant no longer qualify for subsidize house. Therefore, the only issued to be decided at this hearing is the reason stated in the notice issued on January 27, 2012.

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

The landlord had several witnesses to testify at the hearing, however, only the witnesses that were to provide relevant testimony on the reason as set out in the notice were allowed to provide testimony. The landlord's witnesses that were providing testimony only on the landlord's character were excused from this hearing as the landlord's character is not the issue that I must decide.

### Issue(s) to be Decided

Should the one month notice to end tenancy issued on January 27, 2012 be cancelled?

### Background and Evidence

The tenancy began on September 1, 2010. Rent in the amount of \$225.00 was payable on the first of each month. A security deposit of \$300.00 was paid by the tenant.

The landlord testified that he issued the notice to end tenancy based on four letters provided to the tenant and the latest incident that happened on January 22, 2012.

Filed in evidence are four letters.

- A letter dated January 17, 2011, Re: parking.
- A letter dated February 22, 2011, Re: parking and noise complaint in parking lot.
- A letter dated April 21, 2011, Re: complaint (initiated by the tenant)
- A letter dated May 16, 2011, Re: noise complaint.

The witness for the landlord testified that on January 22, 2012, at approximately 12:30 a.m. he was awoken by a red truck revving its engine in the parking lot and was spinning its tire as it exited the parking lot and the driver was driving erratic. The witness testified that fresh snow had just fallen.

When asked if the witness called the police and reported an erratic driver, the answer was no, he did not call the police.

The tenant testified that this person was a guest of hers and his truck is fairly old and he was revving the engine to warm it and when he left in his truck his tires were spinning due to the road condition.

The witness for the landlord testified on January 22, 2012, at approximately 6:30 a.m. he noticed the same red truck came back and a male went to the tenant's rental unit and was knocking on the door, and he was yelling to wake up the tenant. The male also threw snowballs at the tenant's window to try and wake the tenant up.

The tenant states that she apologized that it disturbed another tenant. She was unaware that this person was coming back in the morning or she would have been up.

### Analysis

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

I find that the letters regarding parking and the complaint the tenant initiated are not relevant to the issues of significantly interfered with or unreasonably disturbed another occupant or the landlord.

I find that the noise complaint of May 16, 2011 to be relevant, but that issues appears not to be ongoing as there was no evidence to support that this behavior has been ongoing. It would appear the tenant or her guests had corrected this behavior as nine month has passed since the incident.

I find the issue of January 12, 2012 to isolate. The evidence of the witness was that the tenant's guest revved the engine on this truck and spun his tires in the snow and the witness felt the driving was erratic. However, there may have been a disturbance, but do to the weather conditions and the condition of the road, I cannot find that this disturbance was significant or unreasonable.

Further, I find the morning incident of January 12, 2012, to be isolated. A guest of the tenant was banging on the tenants door and tossed snow balls at the window in the attempt to wake the tenant, there was no evidence to support that this behavior has happened in the pass and has been an ongoing.

I find the landlord has not proven that the notice was issued for reasons stated in the notice, it would be necessary to show a course of repeated or persistent behavior and that the tenant failed to take reasonable steps to correct such behavior once the landlord made her aware of the problem.

Therefore, the one month notice to end tenancy issued on January 27, 2012, is cancelled and the tenancy will continue until legally ended by the Act.

### Conclusion

The tenant's application is granted and the one month notice to end tenancy for cause is cancelled and the tenancy will continued until legally ended by the Act.

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: February 27, 2012.

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Residential Tenancy Branch