



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause and to recover the filing fee for this proceeding.

The Tenant said she served the Landlords with the Application and Notice of Hearing (the “hearing package”) by personal delivery to the Landlord’s office on January 23, 2012. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlords’ absence.

### Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Is the Tenant entitled to recover the filing fee for this proceeding?

### Background and Evidence

This tenancy started on July 1, 2011 as a fixed term tenancy with an expiry date of June 30, 2012. Rent is \$1,200.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$600.00 on June 23, 2011.

The Tenant said he had his previous agent B.P. rent the unit for him as he works out of town most of the time. The Tenant continued to say that on January 16, 2012 his 2 children and his finance moved in to the unit. The Tenant said he had not told the Landlord in advance that this was happening, but the Tenant said he did inform the Landlord by phone and email around January 13, 2012, that his 2 children and his

finance were moving in to the unit around January 16, 2012. The Tenant said the Landlord said it was OK, but he would have to tell the new occupants to be careful of making noise as there were tenants in the unit below. The Tenant said he did this and they are careful about making noise that would disturb the tenants in the lower unit. The Tenant and the Tenant's agent A.P. said they received a Notice to End Tenancy in the mail about January 19, 2012. They said Notice to End Tenancy for Cause was dated January 17, 2012. The Tenant said he spoke with the Landlord and the Landlord said they would do an inspection together on January 31, 2012. The Tenant said his agent A.P. would handle the inspection as he would be out of town working. The Tenant's Agent A.P. said when the Landlord came to do the inspection on January 31, 2012 the Landlord said the owner of the property was dropping the Notice to End Tenancy and they would be continuing the tenancy with the Tenant and the 3 new occupants. The Tenant's Agent A.P. said she asked for written confirmation of this from the Landlord, but has not received anything as of yet. The Tenant's Agent A.P. said they would like to continue with their application to cancel the Notice to End Tenancy for Cause dated January 17, 2012.

### Analysis

As the Landlord did not attend the hearing to support their Notice to End the Tenancy and as the Tenant and the Tenant's Agent A.P. gave affirmed testimony that the Landlord told them the Notice to End Tenancy was dropped or withdrawn and that the Landlord was prepared to continue the tenancy with the 3 new occupants; I find the Tenant has established grounds to be successful in cancelling the Notice to End Tenancy for Cause issued by the Landlord and dated January 17, 2012. Consequently I order the 1 Month Notice to End Tenancy for Cause dated January 17, 2012 to be cancelled and the tenancy is to continue as indicated or amended in the Tenancy Agreement dated June 23, 2011.

As the Tenant has been successful in this matter I order the Tenant to recover the filing fee of \$50.00 from the Landlord. The Tenant may deducting \$50.00 from the March, 2012 rent payment or collect the \$50.00 filing fee directly from the Landlord.

### Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated January 17, 2012 is cancelled and the tenancy is ordered to continue as indicated or amended in the tenancy agreement dated June 23, 2011.

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*.

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Dispute Resolution Officer