



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, 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 One Month Notice to End Tenancy be cancelled and a monetary order to recover the filing fee paid for the Application.

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 One Month Notice to End Tenancy be cancelled or not and is the Tenant entitled to recover the filing fee?

### Background and Evidence

The parties confirmed that they have a written tenancy agreement and that the tenancy commenced on May 01, 2011. The parties stated that the rent is \$1,050.00 per month, due on the first of each month and the tenancy is on a month to month basis. The Tenant still resides in the rental unit at this time. The Tenant provided a copy of the tenancy agreement into evidence. The parties agree that the Tenant rents a suite in the lower part of the house and does not share a kitchen or bathroom with the Landlord who resides in the upper part of the house.

The Tenant confirms that she received a One Month Notice to End Tenancy for Cause which was personally served on her by the Landlord on March 02, 2012. The reasons listed on page two of the Notice served on the Tenant state that the Notice was issued because the “Tenant or a person permitted on the property by the Tenant has: significantly interfered with or unreasonably disturbed another occupant or the Landlord”. The Tenant filed an Application for dispute resolution on March 07, 2012, within less than ten days after receiving the Notice.

The Landlord stated that when the tenancy agreement commenced she informed the Tenant that she wanted quiet tenants. The Landlord states that the Notice was issued because the Landlord feels the noise caused by the Tenant and her boyfriend is excessive and not due to hydro and water usage as alleged by the Tenant. The

Landlord stated that she has witnesses and written statements, however, she did not submit any evidence prior to the hearing and did not bring her witnesses to the hearing. The Landlord stated that on several occasions the Tenant and her boyfriend are loud, yell, fight, and slam doors. The Landlord stated that this occurs at all hours including late at night. The Landlord stated the Tenant also does laundry at all hours of the night. The Landlord stated that the noise has been so excessive that she had to move her daughter out of a room that shared a wall with the suite into a different room in the upper part of the house. The Landlord stated that she has talked with the Tenant and her boyfriend about her concerns about the noise, but the problem has continued. The Landlord stated that she has not called the police and that she has not issued any written warnings to the Tenant.

The Tenant stated that her boyfriend does not live with her but stays over approximately three nights a week. The Tenant stated that she lives with her daughter in the rental unit and thought that they had a friendly relationship with the Landlord and her family. The Tenant stated that she has received no warnings from the Landlord about noise and that she was surprised when she received the One Month Notice after having no warnings from the Landlord. The Tenant stated that she gets along well with her boyfriend and they do not fight and there have been no significant noise disturbances to affect the Landlord. The Tenant stated that when she moved into the rental unit she did not realize that the Landlord could hear through the floors and walls of the house. The Tenant stated that she thinks the real reason why the Landlord wants to end the tenancy is due to the Tenant's hydro and water use which is included in the rent. The Tenant stated that the Landlord has written her a letter complaining about her hydro and water usage and the Landlord's increased costs. The Tenant stated that the Landlord has not tried to increase her rent at this time. The Tenant stated that she has no plans to move out yet. The Tenant stated that she may move into a new house which is currently being built, but that won't be for several months and she will give notice if that happens. The Tenant requested the One Month Notice be cancelled.

### Analysis

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

I accept the parties' evidence that the Tenant was personally served with the One Month Notice to End Tenancy for Cause on March 02, 2012. However, I find that the One Month Notice to End Tenancy for Cause was not issued in accordance with the Act and Policy Guideline. The reasons listed on page two of the Notice, which derive from section 47 of the Act, have not been proven by the Landlord. The Landlord failed to submit any evidence or bring any witnesses to the hearing, although she claims to have these. The Landlord confirmed that she did not provide the Tenant with any written warning prior to the Notice being served. I find that the Landlord has failed to provide sufficient evidence that the Tenant has breached the Act, Regulation, or tenancy agreement.

As a result, I order that the One Month Notice to End Tenancy, served on March 02, 2012, be cancelled.

As the Tenant has been successful in her Application, I order the Tenant to recover the \$50.00 filing fee for this proceeding by deducting it from her next rent payment due, so that the Tenant only pays \$1,000.00 for that month.

Conclusion

I have granted the Tenant's request to cancel the One Month Notice to End Tenancy issued on March 02, 2012.

I have granted the Tenant's request to recover the \$50.00 cost of the Application fee, and ordered her to deduct it from her 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: March 27, 2012.

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Residential Tenancy Branch