



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing was convened by way of conference call in repose to the tenant's application to cancel the One Month Notice to End Tenancy and to recover the filing fee from the landlords for the cost of this application.

The tenant and the tenant's agent along with the landlords attended the conference call hearing. Both parties gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the landlords were permitted to provide additional evidence after the hearing had concluded. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

Is the tenant entitled to have the One Month Notice to End Tenancy cancelled?

### Background and Evidence

Both parties agree that this month to month tenancy started on November 11, 2011. Rent for this unit was \$1,100.00 per month and was due on the first day of each month in advance.

The landlords testify that the tenant has significantly disturbed them and they served the tenant with a One Month Notice to End Tenancy on February 23, 2012 in person. This Notice gives one reason to end the tenancy as follows:

The tenant or a person permitted on the residential property by the tenant has

- (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The landlords testify that the tenant woke the landlords up on two occasions by calling the landlords phone numerous times from his pocket with his cell phone. The landlords state the tenant did apologise and they established between them that instead of the tenant calling the landlord by telephone to do his laundry he would do laundry on Wednesdays and Sundays. That way the tenant would not have to store the landlords' number in his phone and would prevent 'pocket dialling'

The landlords' testify that the tenant has also disturbed the landlords at 6.30 a.m. when the tenants smoke alarm would go off. Strategies were suggested to the tenant to prevent this occurring such as a reminder to turn on the fan and to keep the tenants bedroom door closed when cooking as this is where the smoke alarm is located.

The landlords testify that the laundry room is located in their house and the tenant has to enter the landlord house and go through a bedroom to access the laundry room. On one occasion early one morning the tenant entered the landlords' house on a day not specified as the tenant's laundry day and the female landlord was sleeping in this bedroom. The landlord testifies that she challenged the tenant and told him this was not "cool" and reminded the tenant to finish his laundry on the Wednesday night.

The landlords testify that on February 19, 2012 the landlords were woken at 3.00 a.m. by loud music from the tenants unit. The landlord went to the tenant unit and the tenant was not present but three of his friends were. The landlord testifies he asked the tenants friends to turn down the music which they did. The landlord testifies that over the next 30 minutes the music increased in volume again which necessitated another trip down to the tenants

unit. The landlord testifies that while he was speaking to the tenants friends about the noise the tenant came back to his unit with some more friends.

The landlords' testify that they attempted to speak to the tenant the next day but he went into his unit and refused to answer his door. The landlords state they then called the tenant's father to inform him of that his son's behaviour was unacceptable. The landlords' testify that shortly after this telephone conversation the tenant called the landlords and informed them that he would be vacating the unit by the end of February. The landlords testify that despite the short notice they accepted the tenants Notice.

The landlords testify that the property was sold on January 15, 2012 initially they were told their purchasers wanted to keep the tenant on but on February 23, 2012 the landlords testify their realtor informed them that the purchasers wanted the landlords to give the tenant notice to end the tenancy as they wished to occupy the whole house. The landlords testify that they signed the contract and purchase sale addendum document on February 23, 2012 after it was e-mailed to them by their realtor and they gave the tenant a Two Month Notice to End Tenancy on that date.

The tenants agent disputes the landlords testimony and states it is the tenants belief that the landlords did not issue the One Month Notice in good faith but rather issued this to the tenant because they knew their purchasers wanted vacant possession of the tenants unit on February 15, 2012 and the landlords are trying to avoid paying the tenant the compensation he would be entitled to for the Two Month Notice. The tenant's agent requests that the landlords timing of giving the tenant these two Notices be considered as it would be convenient for the landlords to evict the tenant on the One Month Notice to avoid paying compensation for the Two Month Notice.

The tenant's agent testifies that the tenant did 'pocket dial' the landlords telephone accidentally but that matter was resolved between them after the tenant apologised profusely and gave the landlords a bottle of wine.

The tenant's agent testifies that the tenant would never have entered the landlords spare bedroom to collect his work clothes from the laundry had the tenant known the female landlord was sleeping in that room. The tenant's agent testifies that the landlords' bedroom is in another part of the landlords' house and the tenant again apologised to the landlord and the matter was resolved.

The tenants agent testifies that the tenant does not dispute that he had some friends over to his unit and they did disturb the landlords however the tenant's agent testifies that as soon as the tenant returned to his unit after standing outside the property for a cigarette he turned down the music and the tenant and his friends spoke in whispers for the reminder of the night. The tenant testifies that this disturbance did not occur again.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy.

The tenant does not dispute that his cell phone did pocket dial the landlords, the tenant does not dispute that he did enter the landlords house to collect his laundry and the female landlord was asleep in the bedroom and the tenant does not dispute that he had some friends at his unit and was asked to turn down the music. The tenants argues that the issues with his cell phone and the laundry room were resolved between him and the landlord and are now being used to evict him and the tenant argues that as soon as he was aware he and his friends had disturbed the landlord they turned the music off and no further disturbances occurred.

Consequently, the landlords have the burden of proof to show that the tenant has significantly interfered with or unreasonably disturbed the landlords and I am not satisfied that the landlords have met this burden of proof. A landlord cannot use past events that have been resolved to both parties satisfaction as a reason to end the tenancy. Furthermore the landlords have not shown how one night of disturbance has significantly interfered with

the landlords or significantly disturbed the landlords because once notified the tenant complied with the landlords' requests to turn off the music and no further disturbances occurred after that.

I would also question the landlords' intent as to the reasons given on the One Month Notice considering that they knew on the day the Notice was served that their purchasers had requested vacant possession of the house and the landlord also served the tenant with a Two Month Notice to End Tenancy. Consequently, it is my decision that the tenant's application to cancel the One Month Notice to End Tenancy is upheld.

### Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated February 23, 2012 is cancelled and the tenancy will continue at this time. As the tenant has been successful in setting aside the Notice, the tenant is entitled to recover the **\$50.00** filing fee for this proceeding and a Monetary Order has been issued to the tenant for this amount.

The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

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 19, 2012.

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Residential Tenancy Branch