



# 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 tenants to cancel a one month notice to end tenancy for cause issued on May 28, 2012.

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.

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 submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

### Issue(s) to be Decided

Should the notice to end tenancy issued on May 28, 2012, be cancelled?

### Background and Evidence

The tenancy began on December 20, 2011. Rent in the amount of \$1,125.00 was payable on the first of each month. A security deposit of \$562.50 was paid by the tenants.

The parties agree that a one month notice to end tenancy for cause was served on the tenant indicating that the tenant is required to vacate the rental unit on June 30, 2012.

The reason stated in the notice to end tenancy was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- seriously jeopardized the health and safety or lawful right of another occupant or the landlord.

The landlord testified on January 6, 2012, she attended the tenants unit to investigate electrical issues and the tenant action and manner were negative and not cooperative.

The tenant testified that he was not rude to anyone on that day and he was glad the electrician was there as there was no heat in one room and very little in the living room.

The landlord testified on January 22, 2012, the power fuse box was overloaded and her section of the house would not receive electricity. The landlord stated she left a message for the tenants, however, there was no response and went to the tenants unit and the tenant was annoyed, negative and not friendly.

The tenant testified the landlord's electrical panel could not handle everything that was on the panel. The tenant stated it was frustrating being interrupted by the landlord all the time for electrical problems.

The landlord testified on April 2, 2012, she attended the tenants unit to remind them to turn the exhaust fan in the bathroom off as it had been on for several nights and this resulted in aggressive behaviour by the tenant. The landlord state the tenant then came up to her unit, and assaulted her verbally and invaded her space. The landlord stated she was terrified of the tenant.

The tenant testified the exhaust fan was on due to them using the shower. The tenant stated he did go to the landlord unit to tell her that that he was upset with the restrictions she is continuously to putting on their tenancy, such as not being allowed use the shower in the mornings or when to use the exhaust fan.

The landlord testified on May 25, 2012, she was outside in the garden when the tenant requested her to turn off the laundry dryer and this request was denied. The landlord stated the tenant became abusive, advanced towards her in an aggressive manner and invaded her space.

The tenant testified on May 25, 2012, he was outside in the yard playing with his children when he asked the landlord if she could turn off the laundry dryer as the smell of the heavily scent laundry was bothering his asthma and she said was extremely rude and told him "no". The tenant stated he was frustrated at the lack of consideration the landlord had for him and his family and he walked over to her in the garden and they had a disagreement.

### Analysis

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

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord

- seriously jeopardized the health and safety or lawful right of another occupant or the landlord.

The evidence of the parties was there were electrical issues in January 2012, which were resolved in January 2012. The landlord has provided insufficient evidence to support that the tenant has significantly interfered with or seriously jeopardized the health and safety or lawful right of the landlord or significantly interfered with the landlord.

The landlord's evidence was the tenant attended her unit April 2, 2012 and invaded her space and she was terrified, however, there was no evidence to suggest the tenant entered her unit and there was no evidence of police involvement. The tenant attended the landlord's unit as a result of the landlord attending their rental unit earlier and placing unreasonable restriction on when they are allowed to use the exhaust fan.

The landlord does not have the right to restrict when the tenants are allowed to use the exhaust fan or shower in their rental unit. I find the landlord failed to produce any compelling or persuasive evidence which would lead me to conclude the tenant had seriously jeopardized the health and safety or lawful right of the landlord or significantly interfered with or unreasonably disturbed the landlord.

The evidence of the parties was there was a disagreement on May 25, 2012, regarding turning off the laundry dryer while the tenant and his children played outside. The landlord evidence was that tenant became abusive, advanced towards her in an aggressive manner and invaded her space. The tenant's evidence was the landlord was rude to him and lacked any consideration for his family's health and he walked over to her in the garden to discuss the issue further. I find the landlord failed to produce any compelling or persuasive evidence which would lead me to conclude the tenant had seriously jeopardized the health and safety or lawful right of the landlord or significantly interfered with or unreasonably disturbed the landlord.

Therefore, I grant the tenants' application to cancel the one month notice to end tenancy issued on May 28, 2012. The tenancy will continue until legally ended in accordance with the Act.

The tenants have been successful with their application and the tenants are is entitled to recover the cost of filing the application. The tenants are entitled to deduct \$50.00 from a future month rent payable.

### Conclusion

The tenants' application to cancel a one month notice to end tenancy for cause issued on May 28, 2012 is granted. The tenants are entitled to deduct \$50.00 from a future month rent payable.

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: June 20, 2012.

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Residential Tenancy Branch