



# 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 in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order Cancelling a Notice to End Tenancy for Cause - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlords were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The tenancy began in January 2012. The Landlord states that construction has been taking place on the building containing the Tenant’s unit and that scaffolding is in place on the outside of the building. The Landlord states that on the week-end of July 7, 2012, the Tenant was observed on the scaffolding washing her windows and that following complaints by other tenants, the Landlord’s manager told the Tenant to come off the scaffolding but the Tenant refused. The Landlord states that the Tenant was then served with a Notice to End Tenancy for Cause (the “Notice”). There is no dispute that this Notice lists the following causes:

1. The tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Seriously jeopardized the health or safety or lawful right of another occupant of the landlord;
- Put the landlord's property at significant risk.

The Landlord states that the main problem with the incident was the Tenant's safety and if the Tenant had fallen it would affect the Landlord's insurance premiums. Further, the Landlord states that other tenants seeing this incident may come to believe that they could do the same thing.

The Tenant states that upon moving into the unit, the windows were not clean on the outside of the building and that when the Landlord was asked to clean the windows however the Landlord has not cleaned the outside of the windows to date. The Tenant states that having worked at a construction site and having no fear of heights, the Tenant decided to use the scaffolding to clean the outside of the windows herself. The Tenant states that after a while an unidentified person yelled out a unit window for her to get off the scaffolding but that this person did not identify themselves as anyone other than a city building inspector. The Tenant states that she did not believe this person was such an inspector. The Tenant states that shortly after the building manager asked her to come off the scaffolding and she did.

The Tenant's advocate (the "Advocate") states that he is a landlord and manages a large multi-use building. The Advocate states that the action of the Landlord to serve an eviction notice on the Tenant for this incident is absurd and that the Landlord should have at least spoke with the Tenant prior to serving such a notice. Further, the Advocate argues that the Landlord's description of the incident and its impact on the Landlord or other tenants is careless and lacks credibility.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Ending a tenancy is a serious matter and requires sufficient evidence to prove that the Tenant's actions were of a serious nature as set out in the Notice. Although the actions of the Tenant may have caused harm to the Tenant, I find that the Landlord failed to substantiate on a balance of probabilities that this singular and one time incident has caused or could have caused the Landlord's property to be at risk. Considering that the Landlord's evidence that there was greater concern of harm to the Tenant than to anyone else, and that the Tenant's actions might encourage other similar acts by other tenants, I find that the Landlord has not proven on a balance of probabilities that the Tenant has caused significant harm or unreasonable disturbance to anybody. As a result, I find that the Notice is not valid and that the Tenant is entitled to a cancellation of the Notice. The tenancy therefore continues.

As the Tenant has been successful with her application, I find that the Tenant is entitled to recovery of the \$50.00 filing fee and I order the tenant to reduce September 2012 rent by this amount.

### Conclusion

The Notice is invalid, is cancelled and the tenancy continues. I order the Tenant to reduce September 2012 rent by \$50.00.

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: August 20, 2012.

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Residential Tenancy Branch