



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, CNE, MNDC, FF

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking an order to cancel a one month Notice to End Tenancy issued for cause, a monetary order and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

### Preliminary Matters

There was one prior hearing involving these parties, held on July 12, 2012, in which it was determined that the tenancy was under the jurisdiction of the Act. Legal counsel for the Landlord submitted that the issue should be reopened as it had not been fully heard at the first hearing. I explained to legal counsel that I do not have the authority under the Act to reopen that issue as the matter is *res judicata* - already determined. The Landlord apparently applied for Review then withdrew or cancelled that application.

I also note that amongst her claims regarding cancelling the Notice to End Tenancy, the Tenant had made a request for monetary compensation. I dismiss the monetary claims with leave to reapply, as there was insufficient time to deal with this unrelated claim during the ninety minutes of the hearing, as the primary focus of the hearing dealt with possession of the rental site.

I also note that there was no evidence the Tenant had ever been employed by the Landlord and therefore, the Notice only dealt with the causes described here.

Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?

Background and Evidence

This tenancy began on or about October 10, 2011, with the Tenant moving her 5<sup>th</sup> wheel trailer onto the Landlord's property. I note that the Landlord in this matter is not the property owner, rather she rents the property from a third party not involved in these proceedings. Both parties agreed that the Landlord and Tenant had met at a dog kennel.

On August 29, 2012, the Landlord's legal counsel served the Tenant with a one month Notice to End Tenancy for cause, with an effective end date of September 30, 2012 (the "Notice").

The Notice cited the following reasons for being issued:

That the Tenant or a person permitted on the property by the Tenant has:

Significantly interfered with or unreasonably disturbed another occupant or the Landlord; or

Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord;

Or that the Tenant has engaged in an illegal activity that has, or is likely to:

Damage the Landlord's property; or

Jeopardize a lawful right or interest of another occupant or the Landlord;

Or that:

The Tenant has not done required repairs of damage to the unit/site; or

The Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; or

The Tenant has assigned or sublet the rental unit without Landlord's written consent.

The Landlord contends that the Tenant moved her RV unto the rental property under a “guest” agreement they had. The legal counsel contends it was never intended to be a tenancy, rather the Landlord was trying to help the Tenant by letting her park her trailer on the property temporarily.

The Landlord testified that the Tenant has significantly interfered with her sleep, due to the hours that the Tenant keeps. The Landlord testified that the Tenant often comes home at 2:00 or 3:00 a.m. in the morning. When the Tenant comes home her four dogs, which are kept in the trailer or are with the Tenant, bark and wake the Landlord up.

The Landlord also alleges that the Tenant’s dogs wake up the Landlords’ dogs and then all the dogs start barking.

The Landlord testified that the Tenant is also opening and slamming doors, and making noise at 2:00 or 3:00 a.m. when she comes home and this is a disturbance to her sleep as well. The Landlord further testified that this happens consistently and up to three times a week.

In response, the Tenant denied she comes home late constantly. The Tenant alleges she has only come home late once or twice. She denies that she speaks loudly to the dogs and they do not bark a lot when she comes home as the Landlord suggests.

The Landlord is also concerned about her safety and lawful rights. The Landlord testified she has lost all trust in the Tenant and does not like to leave her home when the Tenant is at the property. The Landlord alleges that the Tenant illegally logged into the Landlord’s hydro electricity billing account and established a false online account in the Landlord’s name. The Landlord alleges that a security question involving the maiden name of the Landlord’s mother was answered as “bitch”. The Landlord testified that the Tenant had requested copies of the hydro electricity bill from her when they had a disagreement about hydro money due to the Landlord from the Tenant. The Landlord alleges the Tenant’s trailer has greatly increased the hydro bill. The Landlord testified she reported this allegedly illegal account creation to police and apparently there was an investigation.

The Tenant testified that the problems at the rental property between the parties all started when the Landlord tried to increase the amount the Tenant was required to pay for hydro electricity. The Tenant did not deny opening the account.

Both parties then gave lengthy submissions and testimony on the other matters involved in the tenancy.

In final summations, the Landlord's legal counsel put it to the Tenant that she did not deny she had created the online account in the Landlord's name without permission.

The Tenant did not respond to this. Instead, the advocate for the Tenant stated that she has contacted the police and that no charges have been laid and that the case is being closed as nothing illegal was found.

### Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Notice is valid and should not be cancelled. Therefore, **I dismiss the Tenant's Application to cancel the Notice without leave to reapply.**

I find the Tenant has significantly interfered with and unreasonably disturbed the Landlord by coming home late at night and disturbing her sleep. As I have made this finding, it is unnecessary to examine the other grounds given in the Notice to end the tenancy.

I prefer the Landlord's evidence on this issue over the Tenants' because I found the Tenant's evidence lacked credibility. I base this on the probability that the Tenant opened an online hydro account in the Landlord's name, without authority to do so.

To clarify; in a criminal case the standard of proving a case is "proof beyond a reasonable doubt". However, in a civil law matter such as this, the standard of proving a case is based on "a balance of probabilities", which has a lower threshold of proof.

By failing to deny this allegation, I found that the credibility of the Tenant's testimony must be given less weight than the testimony of the Landlord. Therefore, I accept the Landlord's testimony that the Tenant has unreasonably disturbed her on several occasions by coming home late at night and waking her up.

For these reasons, I find that the Notice is valid and should not be cancelled. The Tenant must abide by the Notice to End Tenancy and vacate the rental property.

If the Tenant fails to vacate the property, the Landlord may apply for an order of possession under the Act.

As the Tenant has been unsuccessful on the main issue of her Application, I do not award the filing fee for the Application.

Conclusion

**The Notice to End Tenancy is valid and should not be cancelled.**

The Tenant must vacate the property or the Landlord may seek an order of possession by filing an Application for Dispute Resolution.

The Tenant has leave to reapply for her monetary claims.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 10, 2012.

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Residential Tenancy Branch