



# 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 by tenant seeking to an order to set aside a One Month Notice to End Tenancy for Cause. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issues to be Decided

Are the tenants entitled to have the Notice set aside?

### Background and Evidence

The tenancy began on or about January 15, 2013 for fixed term that is scheduled to end on June 15, 2013. Rent in the amount of \$890.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$445.00.

The landlord gave the following testimony:

The landlord received a noise complaint from a neighbour about the subject tenants. The tenant was for loud “screaming and fighting noises”. The local police were called to attend at the incident. A broken car window was observed by the landlord. The landlord initially filed for an “Early End of Tenancy” for the incident. It was the only incident involving the subject tenants’ and has had no noise complaints since. The landlord posted the Notice on the tenants’ door on February 5, 2013. The tenants did not file within the 10 days as stated on the Notice and the landlord feels that the Notice should be upheld.

The tenants gave the following testimony:

The tenant’s do not agree to the severity of the incident as purported by the landlord. The tenants do acknowledge an argument but not a fight. The tenants stated that they received a Notice on the door and in the mail. The tenants do not feel the Notice is valid

as it does not have the proper spelling of the female tenants' name. The tenants were not entirely sure as to when they received the Notice. This was the one and only incident that has occurred during their tenancy. The tenants stated that they have never been formally warned; verbally or in written format. The tenants question the validity of the complaint by the neighbour. The tenants did not file to dispute this matter immediately after receiving it as they received information from the "Service BC" office that they were able to dispute it at the "ET hearing" on February 20, 2013. The tenants were informed by the Arbitrator at that hearing that they were to file a separate application to dispute that Notice. The tenants did file that same day to dispute the Notice. The tenants feel that they should be able to stay and that one isolated incident does not make them bad tenants.

### Analysis

The landlord feels that since the tenants did not file within 10 days of the Notice being issued that the tenancy should end. On the Notice itself it states: *You have the right to dispute this Notice within 10 days after you receive it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. A Dispute Resolution Officer may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.*

The tenants' continually stated that they were prepared to dispute the Notice at the "ET hearing" on February 20, 2013. The tenants did not draw any distinction from the "ET hearing and the One Month Notice to End Tenancy for Cause hearing. The tenants were challenging their end of tenancy regardless of the hearing code associated with it. Both parties continually referred to the decision issued by the Arbitrator on February 20, 2013. In that decision both parties agreed that the One Month Notice to End Tenancy for Cause was sent by registered mail on February 5, 2013. Section 90 of the Act deems that it was served five days later on February 10, 2013. The tenants then had until February 20, 2013 to file for a Dispute Resolution Hearing. The tenants stated that the Arbitrator had directed them to attend on that day if they wish to file, which they did.

The One Month Notice to End Tenancy for Cause referred to in that hearing is the same Notice referred to in this hearing. During today's hearing both parties were unclear as to when the One Month Notice to End Tenancy for Cause dated February 5, 2013 was served. Although there seems to be some discrepancy as to when the tenants did receive the Notice I found their testimony to be compelling and their actions reasonable under the circumstances. Based on the above I accept the tenants' dispute of the Notice and conducted the hearing accordingly.

When a landlord issues a Notice under Section 47 they must show cause as to why they issued that Notice. The landlords issued the Notice on the basis that the tenants: adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or landlord. In the landlords own testimony they acknowledged that this was a onetime occurrence that has not been repeated. The landlord also acknowledged that there has not been any reason to issue any written or verbal warnings since this incident. The landlord has not satisfied me of their claim. It was also made clear to the landlord the importance of correct documentation. The landlord conducted this tenancy as a business and must bear a responsibility to keep accurate records which in this case the landlord did not.

The One Month Notice to End Tenancy for Cause dated February 5, 2013 with an effective date of March 15, 2013 is set aside. The Notice is of no effect or force.

Conclusion

The Notice is set aside. The tenancy continues.

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, 2013

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Residential Tenancy Branch

