



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and the female landlord.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord provided a copy of the tenancy agreement signed by the parties on July 6, 2012 for a month to month tenancy beginning on July 6, 2012 for a monthly rent of \$950.00 due on the 1<sup>st</sup> of each month with a security deposit of \$425.00 paid. The tenancy agreement also stipulates that the tenant is responsible for 70% of the utility charges and that they are due on the 1<sup>st</sup> of each month as well.

The tenant provided a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on June 1, 2013 with an effective date of July 1, 2013 citing the tenant is repeatedly late paying rent (and bills); the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord submits that the tenant was late paying rent for January 2013 and June 2013. She states that the tenant has been late paying rent on at least two other occasions but she could not recall what months the tenant was late. The landlord has

provided several receipts for rent and bills. The receipts for the bills include several that were issued on a date other than the 1<sup>st</sup> of a month.

The landlord also asserts the tenant and her family have made noise late a night by sweeping the floor with a broom; talking on the phone; and crying. The landlord acknowledged there is no soundproofing insulation between the floors.

The landlord also testified that there are many other issues regarding this tenant including cigarettes being thrown over the balcony; issues with a smoke alarm; the tenant's daughter's boyfriend staying in the rental unit and the treatment of the landlords by the tenant. The landlord has not identified any illegal activity committed by the tenant or any member of her household.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant is repeatedly late paying rent;
- b) 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, or
- c) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
  - i. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

Residential Tenancy Policy Guideline 38 states that 3 late payments are the minimum number sufficient to justify a notice under this provision. The Guideline goes on to say that it does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

In the case before me, the landlord has presented evidence to establish the tenant has paid rent late on at least 2 occasions and paid utility bills late on several occasions. However as Section 47 is specific about the late payment of rent only and does not include the payment of utilities, I find the landlord has failed to establish 3 late payments of rent. As such, I find the landlord cannot use this ground to end the tenancy at this time.

As the landlord has provided no evidence that the tenant has engaged in any illegal activity I find the landlord cannot use the clause that she has done so and that the illegal activity has adversely affected the quiet enjoyment, security, safety, or physical well-being of another occupant of the residential property to end the tenancy at this time.

Finally, in relation to the landlords' cause that the tenant is causing disturbances of the landlord resulting from sweeping a broom or having a telephone conversation, I find that these are everyday uses of the rental unit. I also find that, based on the landlord's testimony, these disturbances occur as a result of lack of soundproofing insulation over which the tenant has no control.

### Conclusion

For the reasons noted above, I find the landlord has failed to establish sufficient cause to end the tenancy at this time. As such, I cancel the 1 Month Notice to End Tenancy for Cause issued on June 1, 2013 and the tenancy remains in full force and effect.

While the tenant applied to recover the filing, I find from the notes on the file that no filing fee was charged to the tenant. I therefore dismiss the portion of the tenant's Application seeking to recover the filing fee from the landlord.

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: July 09, 2013

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Residential Tenancy Branch