



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Gateway Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act"), seeking to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice") issued by the landlord.

The tenant and the landlord's agents appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the landlord confirmed receipt of the tenants' application for dispute resolution and attached documentary evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to any relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Have the tenants established an entitlement to have the Notice to End Tenancy for Cause cancelled?

### Background and Evidence

The undisputed evidence shows that this tenancy began on July 1, 2011, monthly rent is \$700, and the tenants paid a security deposit of \$350 at the beginning of the tenancy.

The rental unit is located in a multi unit apartment building.

I must note that these parties were previously in dispute resolution, with a hearing being conducted on June 5, 2013, on the tenants' application for dispute resolution seeking

the landlord's compliance with the Act, among other things. A Decision was rendered on June 7, 2013, by another Arbitrator.

It is important to note that in that hearing and in their application for that hearing, the tenants requested that their neighbour be required to remove the security camera pointed at the tenants' door; the Arbitrator did find that a security camera pointing at a rental unit did breach a tenant's right to privacy and in her Decision, the Arbitrator did order the landlord to take every reasonable measure to ensure that no occupant of the residential property have a security camera pointed at their door.

I must further note that the tenants in their previous dispute resolution raised the issue of excessive noise from the other tenant; however the Arbitrator found that the tenants had submitted insufficient, independent evidence of excessive noise. The Arbitrator informed the parties that the tenants retained the right to file another application for dispute resolution in the event the tenants could produce independent evidence of excessive noise.

Pursuant to the Rules of Procedure in the present matter, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause. The Notice was dated June 7, 2013, was delivered on that date by registered mail, and listed an effective end of tenancy on July 31, 2013.

The causes listed on the Notice alleged that the tenants had significantly interfered with or unreasonably disturbed another occupant or the landlord and have adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord submitted no documentary or digital evidence.

In support of their Notice regarding the alleged illegal activity, the landlord CT confirmed that she misunderstood this alleged cause as there was no illegal activity by the tenants.

As to the other cause listed, the landlord's agent (apparently the building manager) said he received a telephone call on April 10, 2013, from a neighbouring tenant making a complaint about the tenants regarding behaviour, specifically that the tenant was kicking in his door. The landlord confirmed there was a complaint from only one tenant, and this other tenant appeared to be the tenant in question who had pointed a security camera at the tenants' door mentioned in the previous Decision of June 7, 2013.

In response to my question as to what the landlord's agent did to investigate the complaints, the agent said he went to the rental unit and found the complaining tenant knocking on other tenants' doors.

The landlord's agent also said that the tenant had called the police to the residential property, which apparently was an issue with the landlord.

A letter dated April 30, 2013, was issued to the tenants (a copy of which was supplied by the tenants) which served as a warning letter. The landlord informed the tenants that they had made excessive complaints about neighbouring units and instructing the tenants not to harass the staff.

According to the landlord, another warning letter was issued to the tenants on June 7, 2013, as they alleged the tenant made a rude gesture to the landlord's agent. This resulted in the Notice being issued to the tenants. It is noted that this Notice was issued the same day as the Decision from the previous dispute resolution was issued.

In response, the tenant said that on April 10, 2013, he was in his rental unit attempting to work from home; however he was unable to do so due to the extremely loud music coming from the neighbouring unit, which caused his walls to shake.

The tenant said he called the landlord's agent, who attended and said that he did not consider the noise excessive.

The tenant explained that he called the police due to excessive noise from the neighbouring tenant on another occasion as the landlord's agent would not answer his phone after 5:00 p.m.

As to the allegation of the obscene gesture, the tenant said that it was the landlord's agent who was acting in an obscene manner towards him, calling him rude names and making rude comments.

### Analysis

The landlord bears the burden of proving they have grounds to end this tenancy. The landlord has issued a Notice to End Tenancy listing two alleged causes, one of which was confirmed by the landlord was marked in error.

After considering all of the oral evidence submitted at this hearing and documentary evidence submitted by the tenants prior to this hearing, I find that the landlord has provided insufficient evidence to substantiate that the tenants had significantly interfered with or unreasonably disturbed another occupant or the landlord. In reaching this conclusion, I was persuaded by the failure of the landlord to provide evidence to support their Notice other than the dispute verbal evidence provided at this hearing.

When the evidence consists of conflicting and disputed verbal testimony, as is the case here, then the party who bears the burden of proof, the landlord here, will not likely prevail upon a balance upon a balance of probabilities in the absence of independent documentary evidence.

I was also persuaded by the landlord's agent admission that he did "not know what's going on" between this tenant and his neighbouring tenant, which I find to be a deficient

response by a landlord charged to ensure all tenants' quiet enjoyment and which I find further proved that the landlord could not support their Notice to end the tenancy.

I am further not convinced that the tenant made the obscene gesture towards the landlord's agent, or if made, was not unprovoked, as I find it just as likely as not that the landlord's agent used obscene language to the tenant.

I also question the timing of the issuance of the Notice, on the day the last dispute resolution Decision was issued, which dealt with many of the issues brought forth by tenants. I find it just as likely as not that the Notice was retaliatory against this tenant for proceeding with a dispute resolution hearing against the landlord and that the issues remain unresolved due to the landlord's agent's admission that he did nothing to investigate the complaints of the tenants.

Due to the above, I find that the landlord has submitted insufficient evidence to prove the causes listed on the Notice.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated June 7, 2013, for an effective move out date of July 31, 2013, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

### Conclusion

I grant the tenants' application seeking cancellation of the landlord's 1 Month Notice to End Tenancy for Cause and the Notice is hereby cancelled with the effect that the tenancy will continue until ended in accordance with the *Act*.

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* and is being mailed to both the applicant and the respondent.

Dated: July 11, 2013

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Residential Tenancy Branch