



# 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 the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice").

The hearing process was explained to the two parties attending and they were given an opportunity to ask questions about the hearing process. The parties were advised that the landlord would proceed first in the hearing due to the landlord being required to support that the Notice was valid and contained merit.

Thereafter the landlord was provided the opportunity to present her evidence orally and make submissions to me.

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

*Preliminary matter*-The landlord confirmed receiving the tenant's application and evidence. The landlord submitted digital evidence prior to the hearing; however, the landlord failed to serve the digital evidence to the tenant and did not file this digital evidence until March 19, 2014, which was less than 5 business days prior to the hearing.

The landlord was informed that her digital evidence was being excluded due to her failure to comply with section 4.1 of the Rules.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

### Background and Evidence

There is no written tenancy agreement. The rental unit is a basement level suite of a home occupied by the landlord in the upper level.

The undisputed evidence of the parties was that this tenancy began on August 1, 2013, monthly rent is \$850, and the tenant paid a security deposit of \$425 at the beginning of the tenancy.

The undisputed evidence also shows that 14 days after the tenancy began, the landlord issued the tenant a 2 Month Notice to End Tenancy for Landlord's Use of the Property, for which the tenant filed an application for dispute resolution seeking the cancellation of the Notice.

A dispute resolution hearing was held on October 2, 2013, before another Arbitrator, which resulted in the cancellation of that 2 Month Notice, as the other Arbitrator found the 2 Month Notice was not valid.

Pursuant to the Rules, 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 January 31, 2014, and listed an effective end of tenancy on February 28, 2014.

The causes listed on the Notice alleged that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and has engaged in illegal activity that has or is likely to damage the landlord's property, adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord provided no physical evidence, other than the excluded digital evidence.

In response to my initial question in explanation of the Notice, the landlord confirmed that she made a mistake when alleging that the tenant has engaged in illegal activity as there was none.

As to the remaining alleged cause, that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, the landlord provided the following testimony:

- There was “noise and stuff,” apparently referring to the tenant, but not made specific
- “Never had complaints, but phoned and stuff”
- When the tenant’s ex-wife comes over, she and the tenant argue
- The landlord hears the tenant’s two children
- The landlord hears the tenant’s dog
- The tenant is a good tenant, and “nice and stuff”
- The tenant ran the clothes dryer one night, disturbing the landlord, causing her to call him. The tenant then turned off the clothes dryer. The landlord did not state a specific time in which this occurred
- Sometimes the landlord telephones the tenant and he does not answer
- Sometimes the landlord doesn’t even call the tenant

I did not require testimony from the tenant, but in the tenant’s documentary evidence, he alleged that the landlord issued him the Notice due to false pretenses, as the landlord was unsuccessful in evicting him with the 2 Month Notice. The tenant submitted that the landlord had a family member coming in from India and that she wanted the rental unit for that family member.

The tenant further submitted that he is a single father of two children, has never received complaints from the landlord and that the repeated attempts by the landlord to evict him has caused undue stress and anxiety.

### Analysis

I grant the tenant’s application and set aside the 1 Month Notice to End Tenancy for Cause.

The landlord bore the burden of proof of proving the causes listed on the Notice and I find that the landlord has not presented sufficient evidence to demonstrate that the

tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord provided vague and confusing testimony, as I find the landlord's testimony demonstrated the exact opposite of what was listed on the Notice. The landlord provided testimony flattering to the tenant, even saying that the tenant was a good tenant who had never been issued any complaints. Additionally, the testimony shows that the landlord had no reason to issue a complaint.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated January 31, 2014, for an effective move out date of February 28, 2014, 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*.

During the course of the hearing, the evidence demonstrated that the landlord had no reasons for issuing this Notice. Additionally the landlord, shortly after this tenancy began, issued the tenant a Notice to end the tenancy, which was found to be invalid by another Arbitrator.

I draw the landlord's attention to Section 28 of the *Act*, which states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance.

Residential Tenancy Branch Policy Guideline 6 states that a breach of a tenant's right to quiet enjoyment occurs with frequent and ongoing interference by the landlord. The repeated issuance of invalid and unsubstantiated Notices to the tenant could be construed as such a breach of the tenant's rights, for which the tenant could seek compensation.

As I explained to the landlord, a tenant is entitled to enjoy his home, free from the worry of further, unfounded eviction notices.

I, however, make no finding of a monetary compensation for devaluation of the tenancy as the tenant failed to request such monetary compensation and that issue is therefore not before me; however, the landlord is advised that should she continue to issue such unsubstantiated Notices, the tenant may very well seek compensation for loss of quiet enjoyment.

Conclusion

The tenant's application has been granted as I have ordered that the landlord's 1 Month Notice to End Tenancy for Cause dated January 31, 2014, be cancelled.

I order the landlord to comply with the Act and direct that the tenant be given quiet enjoyment of the rental unit.

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 26, 2014

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Residential Tenancy Branch

