



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The tenancy of a main unit over a basement unit in a house started on April 15, 2005. Rent of \$850.00 is payable monthly. On April 25, 2014 the Landlord served the Tenant with a one month notice to end tenancy for cause (the “Notice”). The Notice lists the following causes:

1. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
2. The tenant or a person permitted on the property by the tenant has:

- a. Significantly interfered with or unreasonably disturbed another occupant or the landlord;
- b. Put the landlord's property at significant risk.

The Landlord represented by an agent (the "Landlord") states that the Tenant breached a term of the tenancy agreement addendum that allows the Landlord to inspect the unit with 24 hours notice. The Landlord agrees that this part of the tenancy agreement is only in compliance with the Act if the notice is served in person.

The Landlord states that the Tenants have caused significant disturbance of the lower tenant who has complained about noise. The Landlord provided a copy of an email from the lower tenant dated June 10, 2014 that sets out complaints over the Tenant's grandchildren who run on the floors during the day and the sounds of the Tenant working at a computer while tapping its foot on the floor in the middle of the night.

The Landlord states that the Tenants have caused significant risk to the property by running electrical cords from outdoor outlets to the shed, a car and a trailer. The Landlord states that a contractor looked at the cords and told the Landlord that this was a fire hazard. The Landlord did not provide a letter from this contractor. The Landlord indicates that they have a belief based on the contractor's belief that this could be a potential hazard. The Landlord states that no other inspection has been done such as an inspection by the fire department. The Tenant states that the cords were not an issue for the previous agent and provided a copy of an email in relation to the presence of the cords. The Tenant states that they are outdoor cords and CSA approved. The Tenant states that they have never blown a fuse and most of the cords are left unplugged and only used for lights.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or

reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid.

Section 5 of the Act provides that a landlord may not avoid or contract out of the Act and that any attempt to do so is of no effect. Given that the tenancy agreement addendum provides for a 24 hour notice period regardless of service of the notice and is in conflict with the Act's requirements for notices to tenants, I find that this section of the tenancy agreement is of no effect. As the Landlord has relied on a breach of a term that has no effect, I find that the Landlord has not shown a breach of a material term.

Section 28 of the Act provides that a tenant's right to quiet enjoyment of a rental unit is protected. I take this enjoyment to include the ability to carry out normal and reasonable living activities in a rental unit. The Landlord's evidence indicates that the lower tenant is subjected to noise from use of a computer, foot tapping and children running on the upper unit. I consider this evidence of noise from normal living activities, none of which are unreasonable or unexpected in the use of a person's home. The Landlord provided no evidence of the extent of sound proofing between the upper and lower unit. If one accepts that the noise from upper daily living disrupts the lower unit, it may be that there are insufficient sound barriers between the units. This is the Landlord's responsibility, if the Landlord wishes to provide "quiet enjoyment" for both units. In any event, and without the need for any evidence from the Tenant, as the noise complained of by the lower unit comes from normal activities and reasonable use of the upper unit I find that the Landlord has failed to provide any evidence that the Tenant caused significant interference or unreasonable disturbance.

The Landlord's belief of fire hazard caused by the Tenant's use of electrical cords is based solely on the Landlord's stated belief of a 3<sup>rd</sup> party. There is no evidence for the basis of the belief of this 3<sup>rd</sup> party. I find therefore that the Landlord has failed to substantiate that the Tenant acted to put the Landlord's property at significant risk.

As the Landlord has not substantiated any of the reasons for the Notice I find that the Notice is not valid and that the Tenant is entitled to a cancellation of the Notice. The tenancy continues.

As the Tenant has been successful, I find that the Tenant is entitled to recovery of the \$50.00 filing fee. I order the Tenant to deduct the \$50.00 from the next month's rent payable.

Conclusion

The Notice is cancelled.

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: June 23, 2014

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Residential Tenancy Branch

