



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      cnc, erp, ff

### **Introduction:**

The tenant requests an order to cancel a Notice to End Tenancy, and an order for emergency repairs to the premises.

### **Issue(s) to be decided:**

- Should the Notice to End Tenancy be cancelled, or has the landlord established grounds to end this tenancy?
- Should an order for emergency repairs be made?

### **Background and Evidence**

This tenancy began on or about May 15, 2014. Rent is \$750.00 per month, payable on or before the 15<sup>th</sup> day of each month.

A one month Notice to End Tenancy was posted on the tenant's door on January 28, 2015, and was handed to the tenant on February 3, 2015, to end this tenancy effective March 15, 2015. This Notice was disputed by the tenant within the requisite 10 day period. The landlord submits the Notice was given on the basis that the tenant is difficult, plays loud music after 10:00 pm, and sends constant text messages to his wife. She persists in this behaviour, even though asked to stop.

The tenant contends that she has been given no warnings about noise complaints, and believes that the Notice was given because she complained about a leaking gutter. She denies that she is noisy. She does not consider that sending text messages about issues related to her tenancy is improper in any way. The tenant alleges she sent a fax to the Tenancy office with written evidence in advance of this hearing, (but I note that no such evidence appears on the record).

### **Analysis:**

The landlord bears the burden of proof, to establish that on a balance of probabilities there is legitimate cause to end the tenancy. In this case, the only evidence I have in this regard is the oral testimony of the landlord. This evidence fails to meet the necessary standard of proof, for the following reasons:

1. I am not provided with a copy of the subject notice by the landlord;

2. I am not provided with any corroborating evidence or testimony of witnesses to support the landlord's oral testimony that the tenant has been disruptive after 10:00 pm, or that her text messages are of a harassing nature;
3. I am not provided with copies of any written warnings given by the landlord to the tenant to eliminate late night noise, or constant text messages;
4. The tenant's testimony is at odds with the landlord's, and she submits she is not noisy and has received no warnings.

While it is possible that the tenant is not being truthful, and she has indeed been excessively noisy and disturbing, that has not been demonstrated on a balance of probabilities. In the absence of sufficient evidence from the landlord, cause to end the tenancy is not proven. The Notice is therefore cancelled, and this tenancy shall continue.

The tenant alleges there are emergency repairs required to the premises. The Residential Tenancy Act specifically defines and limits what is meant by the term "emergency repairs". In this case, the apparent repair is for a leaky gutter. This type of repair may qualify as a general repair, (but I note no claim is advanced for any general repair), but does not qualify as an emergency repair. No order is therefore appropriate.

As the tenant has been partially successful in her claim, I order that she recover the sum of \$25.00 from the landlord, representing recovery of half of the filing fee paid in this matter. The tenant may deduct this sum from a future rental payment.

### **Conclusion**

The subject Notice to End Tenancy is cancelled. The tenancy continues.

No emergency repair order is made.

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 03, 2015

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Residential Tenancy Branch

