



# 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 an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to allow a tenant more time to make an application to cancel a Notice to End Tenancy, to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) and to recover the filing fee from the landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Preliminary matter

The first issued that must be determined is whether the tenant should be allowed more time to make an application to cancel a Notice to End Tenancy. In this case, the landlord served the tenant with a copy of the Notice, by posting to the door of the tenant’s rental unit on March 24, 2015. Under the Act, a document served in this manner is deemed to be received on March 27, 2015.

The tenant had 10 days after the Notice was received to file their application for dispute resolution, which I have determined that April 6, 2015, was the last day to file their application. However, April 6, 2015, was a statutory holiday and the Residential Tenancy Branch was not open. As a result, the last day was automatically extended to the next business day of April 7, 2015.

In this case, the tenant’s application for dispute resolution was filed on April 6, 2015, by using the online services, and processed by the Residential Tenancy Branch staff during normal business hours. I find the tenant’s application for dispute resolution was filed within the required timeframe permitted under the Act. Therefore, I find it not necessary to grant the tenant more time to make an application.

### Procedural matter

In a case where a tenant has applied to cancel a Notice, Rule 11.1 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issue to be Decided

Should the Notice issued on March 24, 2015, be cancelled?

### Background and Evidence

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on April 30, 2015.

The reason stated in the Notice was that the tenant has:

- allowed an unreasonable number of occupants in the unit; and
- significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord's agent testified that on March 23, 2015, the tenant was having a "CD" release party and they received numerous complaints. The agent stated that the security personal approached the tenant's rental unit at 3:16 am to inform the tenant to keep the noise down. The agent stated that the security personal witnessed about sixty people in the tenant's rental unit and other guests were wondering throughout the building and spilling alcohol in the hallways. The agent stated that the tenant also gave another person their "Fob" which allowed other individuals to access the building.

The landlord's agent testified that the tenant did not have their guests leave and the noise continued and the police were called and attended the premises at 5:20 am.

The landlord's agent confirms, they did not submit any witness statements or video surveillance. The agent confirmed they did not speak to the police after the incident.

The tenant testified that they did not have a "CD" release party. The tenant stated that they had just come home that evening after they completed their performance with 4 to 5 invited guests, who were not drinking or smoking.

The tenant testified that often they have "groupies" follow them as they are musicians. The tenant stated that they did not invite 10 to 12 other individuals or give anyone access to the building. The tenant testified that these uninvited individuals attended their rental unit; however, they were informed to leave in a very polite way as they did not want to cause any problems.

The tenant testified that these individuals left; however, they were invited into the rental unit down the hallway. The tenant stated that when the police attended it was not because of their guests as they had left by this time and their unit was empty. Rather it was because of the other renter down the hallway. The tenant's stated that the police issued the other renter a verbal warning.

Filed in evidence for the tenant is a witness statement signed by three renters on the same floor, which indicated between the hours of 3am until 6am, they were not disturbed by any noise, loud screams or loud music during this time.

Filed in evidence for the tenant is a witness statement from JW, which in part reads,

“I was leaving the unit when the police arrived at [tenant’s unit number removed] to speak to [tenant]. When police saw there was no one around, the police moved onto the next unit who still had guests in the unit and was given a verbal warning. No verbal warning was given to [tenant], police just told [tenant] the reason as to why there were at the door.”

[Reproduced as written]

The landlord’s agent argued that the other renter informed them that they only took in the tenant’s guests that were in the hallway in order for the tenant not to get in trouble.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Under section 47 of the Act, a landlord may end a tenancy by giving notice to end the tenancy for specific reasons. A Notice issued under this section of the Act must comply with section 52 of the Act – Form and content.

Upon my review of the Notice, I find the Notice complies with the requirements of section 52 of the Act.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has not provided sufficient evidence to show that the tenant has:

- allowed an unreasonable number of occupants in the unit; and
- significantly interfered with or unreasonably disturbed another occupant or the landlord.

The evidence of the landlord’s agent was that they were informed by the security personal that there were about 60 people in the tenant’s rental unit, causing a disturbance. The evidence of the tenant was that they had 4 to 5 invited guests and another 10 to 12 uninvited individuals showed up at their rental unit and were told to leave. The evidence of the tenant was those individuals were then invited into another renter’s unit. Both parties have provided a different version of events and both versions are probable.

In this case, the burden of proof is the landlords. The landlord’s agent did not have the security personal attend the hearing to provide any testimony of the incident that occurred on March 23, 2015. No witness statements were provided by any of the other renters or occupants of the building that were alleged to have been significantly or unreasonably disturbed.

Further, the police attend the building at approximately 5:20 am on March 23, 2015. The landlord's agent did not contact the police who attended the premises to determine what the police found to be the source of the complaint, which would have been reasonable when properly investigating the incident.

Even if I accept the landlord's version that the other renter told the landlord that they invited the individuals from the hallway into their rental unit, as they believed they were helping the tenant not to get into trouble that was the other renter's personal choice. The tenant cannot be held responsible for the actions of the other renter.

Therefore, I find the Notice issued on March 24, 2015, has not been proven by the landlord. Therefore, I grant the tenant's application to cancel the Notice issued on March 24, 2015 and the Notice has no force for effect.

Since the tenant has been successful with their application, I find the tenant is entitled to recover the cost of filing their application from the landlord. Therefore, I authorized the tenant a onetime rent reduction of \$50.00 from a future rent payable to the landlord.

### Conclusion

The tenant's application to cancel the Notice, issued on March 24, 2015, is granted. The tenancy will continue until legally 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*.

Dated: May 21, 2015

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Residential Tenancy Branch