



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This was a hearing with respect to the tenants' application to cancel a one month Notice to End Tenancy for cause. The hearing was conducted by conference call. The tenants and the landlord's representatives called in and participated in the hearing.

### Issue(s) to be Decided

Should the Notice to End Tenancy dated November 30, 2015 be cancelled?

### Background and Evidence

The rental unit is an apartment in Victoria. The tenancy began in October, 2002. On November 30, 2015 the landlord personally served the tenant with a one month Notice to End Tenancy for cause. The Notice required the tenants to move out of the rental unit by December 31, 2015. The stated reason for ending the tenancy is that the tenants have seriously jeopardized the health or safety or lawful right of another occupant or the landlord. The tenants applied to dispute the Notice to End Tenancy on December 4, 2015.

At the hearing the landlord testified that the Notice to End Tenancy was given because another occupant in the rental property made repeated complaints that he was disturbed and his sleep was affected by an electric fan operating in the tenants' rental unit. He said at the hearing that the issue with respect to the fan had been resolved and the landlord therefore wished to withdraw the Notice to End Tenancy for cause.

The tenants were not content with the landlord's withdrawal of the Notice to End Tenancy. The tenant said she was concerned that the landlord would interfere with the tenants' daytime operation of the fan in the rental unit.

### Analysis

The landlord testified at the hearing that the grounds for ending the tenancy were resolved and he requested that the Notice be withdrawn. Because the landlord did not provide evidence at the hearing that there were any grounds for the Notice to End Tenancy, I allow the landlord's request to withdraw the Notice to End Tenancy. The withdrawal of the Notice to End Tenancy does not preclude the landlord from issuing a further Notice to End Tenancy, if there are reasonable grounds for doing so.

The tenants applied to cancel the Notice to End Tenancy, because the Notice is withdrawn their application is dismissed and the tenancy will continue until ended in accordance with the *Residential Tenancy Act*. The landlord did not mention any ongoing concerns with the tenants' use of the fan in the rental unit. In the absence of a complaint, I will not address the tenant's hypothetical concerns about the use of a fan in the rental unit. Because the landlord chose to withdraw the Notice to End Tenancy, I find that the tenants are entitled to recover the \$50.00 filing fee for their application; they may deduct the sum of \$50.00 from a future instalment of rent due to the landlord.

### Conclusion

The Notice to End Tenancy has been withdrawn and the tenancy will continue. The tenants have been awarded the \$50.00 filing fee for their application.

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: January 28, 2016

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Residential Tenancy Branch

