



# 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 an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on July 14, 2016.

This matter commenced on September 2016, and was adjourned to reconvene on November 10, 2016. The interim decision should be read in conjunction with this decision.

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.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 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.

### Issues to be Decided

Should the Notice issued?

### Background and Evidence

The tenancy began on November 1, 2013.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on August 31, 2016.

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

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety of lawful right of another occupant or the landlord; and
- put the landlord's property at significant risk.

The landlord testified that their niece has lived in the upper rental unit for the past 24 years with their family and there has never been a problem with other renters. The landlord stated that they will let their witness DM explain the reasons for issuing the Notice.

The witness DM testified that the tenant harasses them by sending them text messages because their husband takes a bath twice a day. DM stated that they have received text messages at 5:30 a.m when their husband is getting ready for work and then again after he gets home from work. DM stated that their husband works in a freezer all day and has the second bath to warm up.

The witness DM testified that the tenant is constantly complaining about the hydro bill and water bill. DM stated the tenant has sent them texts messages and pictures of women carrying water on their head.

The witness DM testified that the tenant harasses them when they use the dishwasher. DM stated that on one occasion it was 10:45am in the morning and they had just started the dishwasher and was at the kitchen sink when the tenant yelled up calling them a "selfish bitch" and then the tenant went outside and cranked the music in their car. DM stated that they could not hear the music; however, it woke their son up. DM stated that when their son confronted the tenant, they turned down the music down.

The witness DM testified that the tenant was given an option of buying into the compost and garbage pickup program. DM stated that the tenant refused to pay, so they are not entitled to use the garbage cans. DM testified that the tenant used their compost box to dispose of a flower arrangement. DM stated that they took the flower arrangement out of the compost and returned to the tenant. DM stated that the tenant's recycling is also embarrassing and they place their boxes on the grass that they have to cut.

The witness DM testified that the tenant has blocked them from the laundry room by parking their car close to the chimney and then right up against the laundry room wall, as a result they could not access the laundry room. DM stated that at the time the tenant and their son were walking up the driveway. DM stated that they told them that they were inconsiderate and the son apologized, which they then told the boy it was not his fault, it was their mothers.

The tenant testified that the problems only started when they were told to pay the utilities directly to the landlord and not to give DM any more money as the landlord discovered DM was not paying the utilities bills and spending the money.

The tenant testified that they share the utilities and their portion is 40%. The tenant stated that they were friends with DM, and they were trying to find ways to reduce the cost of the utilities. The tenant stated that they did texted DM about their husband having baths, only to suggest that maybe showers would be more cost effective.

The tenant testified that the DM turns on the dishwasher early in the morning and it sounds like a truck. The tenant stated that they know that nothing can be done as this is normal household noise. The tenant stated that the day DM was referring to was on their birthday and they went and sat in the garage to get away from the noise of the dishwasher and to enjoy a cup of coffee. The tenant stated that they did turn on the radio in their car, as they do not have a radio in the garage; however, it was not blaring and DM could not even hear the music.

The tenant testified that garbage was to be included in rent. The tenant stated that the flower arrangement that they put in the compost box was extremely small, which was removed by DM and left at their door.

The tenant testified that they did not intentionally block access to the laundry room. The tenant stated that their son only apologized to DM as he was scared when DM yelled at them.

### Analysis

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

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:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety of lawful right of another occupant or the landlord; and
- put the landlord's property at significant risk.

In this case, the reason the landlord had stated several reasons in the Notice. The landlord proved no evidence that the tenant has seriously jeopardized the health or safety of lawful right of another occupant or the landlord; and put the landlord's property at significant risk. Therefore, I find the landlord has failed to prove these reasons.

In the case, DM alleged harassment by text message regarding their husband's use of the bath water. DM did not provide a copy of the text messages for my review or consideration. DM did not give any specific date of when these text messages were sent regarding the issue of the water. Further, I find if DM found the text messages to be bothersome, DM simply could have blocked the tenant's number in order not to receive these communications. I find this does not constitute a significant interference or unreasonable disturbance.

I further find the issue of music did not unreasonably disturb DM, as DM was not aware of the music. While I accept it may have woken DM's son from his sleep, this was a 10:45 am, and when the tenant was asked to turn the music down, the tenant did so.

While DM has alleged other disturbance such a complaints regarding the dishwasher, I find DM has not provided sufficient evidence to support that that the tenant's action were a significant interference or an unreasonable disturbance.

I further find the issue of the garbage is not a significant interference, and any problems arising from the garbage may be from the landlord's failure to provide services that were included in rent. As the tenancy agreement submitted in evidence shows garbage is included in the rent, this would include rental of the bins, if special bins are required.

Further, it is not DM's role to be moving recycling bins from designated areas simply because they are embarrassed by the way the tenant recycles or that it is on grass that they are responsible to maintain. I also find the actions of DM's by removing and returning to the tenant a small clump of flowers that the tenant placed into the compost box to be childish and it reasonable that this childish behaviour can only create tension

between the parties. It is the landlord's role to address concerns and resolve disputes between their renters.

The matter of the blocking access to the laundry facilities was a one-time issue and not ongoing. I also find this was not a significant interference or an unreasonable disturbance.

Based on the above, I find the landlord has not proven the Notice. Therefore, I grant the tenant's application to cancel the Notice. The tenancy will continue until legally ended in accordance with the Act.

### Conclusion

The tenant's application to cancel the Notice, issued on July 14, 2016, is granted.

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: November 29, 2016

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Residential Tenancy Branch