



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, PSF, 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;
2. An Order for the provision of services or facilities - Section 65; and
3. An Order to recover the filing fee for this application - Section 72.

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

### Preliminary Matters

During the hearing no evidence was provided in relation to the Tenant’s claim for services or facilities. As this may have been an oversight on the Tenant’s part, I dismiss this claim with leave to reapply. Also during the hearing it was determined that the Landlord’s last name was spelled incorrectly in the application. The Parties agree that the spelling should be corrected and this has been done on the application and style of cause herein.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

There is no written tenancy agreement. The tenancy started on June 30, 2015. Rent of \$800.00 is payable on the first day of each month. At the outset of the tenancy the

Landlord collected \$400.00 as a security deposit. On February 8, 2017 the Landlord served the Tenants in person with a one month notice to end tenancy for cause. There is only one reason checked off: significant interference or unreasonable disturbance.

The Landlord states that the Tenants were told at the outset of the tenancy that smoking was not allowed anywhere on the rental property including outside the unit. The Landlord states that the Tenants have guests that smoke outside the unit and that the smoke drifts into the Landlord's home through the windows. The Landlord states that the Tenants started having parties every week-end during the summer of 2016 that would start on a Friday and last until early morning on the following Sunday. The Landlord states that the police were called once however they did not come until 5 am the next morning and finding the Tenants asleep informed the Landlord that they would not bother the Tenants. The Landlord states that on one occasion the noise made their son come to them at 2 a.m. and the Landlord went to the Tenants unit to ask them to be quiet. The Landlord states that this was the only time they went to the Tenant's door with a noise complaint. The Landlord states that the Tenants have a nephew with a drug addiction as told to the Landlord by the Tenants and that this nephew was seen on the driveway one week giving money to a stranger. The Landlord states that she believes that nephew is dealing drugs.

The Tenant states that they have never had loud parties as described by the Landlord but that they have had a couple of guests over to watch hockey games on the week-ends and that their cheers can be loud. The Tenant states that they never have guests past 11:00 p.m. The Tenant states that at the most they have only had 4 or 5 guests at any time. The Tenant agrees that they have some guests that smoke outside and states that they were never told that guests could not smoke outside when they agreed to rent the unit. The Tenant states that no smoking occurs in the unit. The Tenant denies that their nephew is selling drugs and states that he never told that Landlord that his nephew is a drug addict. The Tenant states that the Landlord's husband told the Tenant that he also used to smoke and that it could very easily be the Landlord's husband who is smoking outside the unit. The Tenant submits that the Landlord has

issues with noise past 9 p.m. and does not allow any noise after that time. The Tenant states that he believes the Landlord is retaliating for the Tenants asking the Landlord to clear their sidewalk of snow and ice or to leave a shovel for the Tenant to clear when it snowed in early February 2017. The Tenant states that the Landlord's husband swore at them when they asked.

### Analysis

Section 47 of the Act provides that a landlord may end a tenancy where the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. The burden of proof lies with the landlord in providing evidence to end the tenancy on this basis.

Without supporting evidence such as a signed tenancy agreement with a specific non-smoking provision for the outdoors I do not accept that the Tenants agreed to any restrictions on their guests while outside the unit. Further, while I can accept that smoke from the outside may be somewhat disturbing, there is no evidence that it caused any significant interference or unreasonable disturbance.

There is only conjecture on the part of the Landlord in relation to what was occurring with the Tenant's nephew and I also consider that the evidence of the number of these occurrences was non-existent or vague.

The Landlord's evidence of noise over an entire week-end for every week-end since last summer seems fairly exaggerated in the light of their evidence that they only went down once to warn the Tenants of the noise. There is nothing to support the Landlord's oral evidence of ongoing noise such as independent witness statements. Further there was no evidence of how the Tenant's noise significantly affected the Landlord other than waking their son. I do not consider this evidence of anything significant. Unless a Landlord took measures to put sound barriers in place prior to renting out a unit in their house, the Landlord must expect some level of noise to carry over.

I find the Tenant's evidence of not having parties and only making noise in relation to hockey games plausible and persuasive. For all the above reasons I find that the Landlord has not provided sufficient evidence to substantiate the end of the tenancy for cause and I find that the Notice is therefore not valid. The Tenants are entitled to a cancellation of the Notice and the tenancy continues.

As the Tenants have been successful with their application I find that the Tenants are entitled to recovery of their **\$100.00** filing fee. The Tenants may deduct this amount from future rent in full satisfaction of the entitlement.

#### Conclusion

The Notice is cancelled and of no effect.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 13, 2017

---

Residential Tenancy Branch