



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, OLC

### Introduction

This hearing was convened to deal with the tenant's application under the *Residential Tenancy Act* (the "Act") for an order cancelling a 1 Month Notice to End Tenancy for Cause dated March 30, 2017 (the "1 Month Notice") and for an order requiring the landlord to comply with the Act, regulation, or tenancy agreement.

Both the tenant and the landlord attended the hearing. Both had full opportunity to be heard, to present affirmed testimony, to make submissions and to present documentary evidence, and to respond to the other party.

Service of the tenant's application, notice of hearing, and documentary evidence was not at issue. The landlord had not submitted any documentary evidence.

At the outset of the hearing the tenant withdrew her application for an order requiring the landlord to comply with the Act, regulation, or tenancy agreement.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

### Background and Evidence

A copy of the tenancy agreement was in evidence. This tenancy began in August of 2016. Monthly rent is \$925.00, due on the first of the month, and the tenancy is currently month to month. A security deposit of \$460.00 was made at the beginning of the tenancy and remains in the landlord's possession.

The 1 Month Notice indicates that the tenant has “significantly interfered with or unreasonably disturbed another occupant or the landlord.”

The landlord testified that the tenant occupying the rental unit below the applicant tenant moved in March 1, 2017 and moved out April 2, 2017 because of the noise above him. The downstairs tenant wrote a letter stating as much, which the landlord had not submitted as evidence but which the landlord read from during the hearing.

The landlord further testified that he did not receive any complaints from the downstairs tenant until March 26, 2017 and that he himself did not issue the tenant any warnings. The landlord did include a letter dated March 30, 2017 with the 1 Month Notice, both of which the tenant received on April 1, 2017, when she found them slipped under her door. The letter references the wrong unit number but is addressed to the correct tenant. The letter summarizes noise complaints on March 27, 28, and 29, including “stomping” and “yelling” late at night and early in the morning. The landlord’s letter then states: “This is getting to be a major problem for other residents in the building. Any further disturbance the police will be called. You and your boyfriend are so loud other residents can you what your screaming at each other . . .” (reproduced as written).

The tenant in response testified that her infant son was ill during those dates in late March and that she was up through the night as a result. She further testified that the infant’s father does not live in the rental unit and was not present on all of those nights, with the result that there could not have been arguing on all three nights. She also stated that the downstairs tenant did not raise any concerns with her about noise at all, and that the first notice from the landlord she had of any concerns was when she received the 1 Month Notice.

The tenant included in her evidence a letter she wrote to the landlord dated April 1, 2017. In the letter the tenant notes that she has not been previously warned verbally or in writing regarding noise concerns. She also states: “My baby has been sick the past few days and has been crying more than usual. I have done everything possible to sooth him and comfort him in order to prevent disturbances of other residents.” She concludes: “I intend to apply for dispute resolution . . . However, I would welcome an opportunity to discuss this matter with you in person in the hopes that we can resolve this and any concerns and continue my tenancy successfully.”

The landlord also stated that one night he heard noise from the apartment and was concerned about for the safety of a child inside, and when the tenant did not answer the door in response to his knocking, he called the police.

The tenant in response said she had not heard the landlord knock and that when the police attended they spoke with her and left. She said that the noise was made by her toddler who was upset about an ipad not being charged.

### Analysis

Section 47(1)(d)(i) of the Act allows a landlord to end a tenancy for cause where the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. Unless the tenant agrees that the tenancy will end, the tenant must dispute a notice under this section by filing an application within 10 days of receipt. In this case, the tenant received the 1 Month Notice on April 1, and applied to dispute it on April 4. The tenant is therefore within the applicable time limit.

Once a tenant disputes a notice, the burden of proof is on the landlord on a balance of probabilities to establish the cause alleged. Here, the landlord has not submitted any documentary or audio evidence in support of his claim. He has not called any witnesses or submitted any witness statements. He has not included any evidence from the police. The landlord's testimony was not sufficient to convince me that the tenant has made noise that has been significantly or unreasonably disruptive.

There is insufficient evidence to establish significant disruption even accepting the statement from the downstairs tenant that was read aloud by the landlord during the hearing. In that statement, the downstairs tenant says that he moved out because of the noise from the upstairs tenant. However, the downstairs tenant did not raise any concerns with the landlord or with the tenant above him until March 26, 2017, and he moved out on April 2, 2017, after having lived in the rental unit for only a month. It is more likely that if the noise was significantly disruptive over an extended period of time the downstairs tenant would have raised his concerns earlier. The fact that he did not, and that the only documented complaints occurred over a period of those three days at the end of March, suggest that the disruption was time-limited. I accept the tenant's evidence that her family was awake at night over a period of three nights because of her infant's illness. This alone does not warrant terminating the tenancy.

In summary, the landlord has not established on a balance of probabilities that there is cause to end the tenancy under s. 47 of the Act. Accordingly, I cancel the landlord's 1 Month Notice.

Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The landlord's 1 Month Notice is cancelled. The tenancy will continue until ended in accordance with the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 09, 2017

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Residential Tenancy Branch