



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Princeton & District Community Services Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            CNC, 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; and
2. 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. The Witness provided evidence under oath.

### 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

The tenancy started in 2002. Rent of \$417.00 is payable on the first day of each month. On April 20, 2017 the Landlord served the Tenant with a one month notice to end tenancy for cause (the "Notice"). The reason set out on the Notice indicates that the Tenants have significantly interfered with or unreasonably disturbed another occupant or landlord and has seriously jeopardized the health, safety or lawful right of another occupant or the landlord.

The Landlord states that on March 29, 2017 the Tenants complained about noise from the lower unit. The Landlord states that after investigating she determined that the tenant in the lower unit was not making noise. The Landlord states that upon reporting back the Tenant became upset and stated that if the lower tenant wanted to fight the Tenant would start fighting too. The Landlord states that on April 3, 2017 the tenant from the lower unit complained that the Tenant

had come to her patio door and banged on it while swearing. The Landlord states that the tenant was advised to call the police. The Landlord states that while the Landlord did not attend the unit to investigate the Landlord did follow up with the police. The Landlord states that the police officer told her that all was fine and that there was nothing he could further orally report. The Landlord states that the police officer said that there would possible not be any further altercations and that the Tenant was warned not to have any contact with the lower tenant. The Landlord states that she was satisfied with this outcome. The Landlord states that later that day the tenant reported that the Tenant again was banging on the ceiling and making loud noises. The Landlord states that there were other incidents in 2013.

The Witness, the tenant in the lower unit, states that on April 3, 2017 the Tenant was banging and kicking at the door while screaming profanities. The Witness states that she closed her curtain on the Tenant and the Tenant went away. The Witness states that given the old age of the Tenant she was reluctant to call the police but did on the advice of the Landlord. The Witness states that prior to this incident the Tenant had banged on the ceiling at least 2 to 3 times each week for various noises made by the Witness. The Witness states that while the police were in the upper unit speaking to the Tenant there was a lot of banging happening. The Witness states that later that evening the upper Tenant again was banging, slamming doors and running a vacuum cleaner.

The Tenant denies kicking on the Witness's door and states that he tapped on the door and asked her "to turn the bloody fan off". The Tenant states that after that he simply walked away. The Tenant states that when the police arrived they spoke about the fan and the Tenant was told that people have a right to run their fans. The Tenant states that while the police officer was there the officer only stood at the door while the Tenant was seated and that there was no banging of any kind. The Tenant states that he and his wife are both in their 80's. The Tenant agrees that he did bang on the floor of the Witness's unit over the past 6 months but that it only occurred about 4 or 5 times in total. The Tenant denies that he did anything the evening after the police attended the unit. The Tenant's wife, also a Tenant, states that this whole business had been hard on her heart. The Tenant's wife states that she does make a banging noise when she uses her meat hammer to pound steaks. The Tenant's wife states that she went to the Witness's door on one occasion to ask her to turn off her fan and that the Witness said she could not stand the smell in her unit. The Tenant's wife states that when she spoke to the

Landlord about the situation the Landlord told her that if she didn't like it she could move. The Tenant states that they have the support of at least 6 other tenants in the building having collected letters from them.

The Tenant's advocate states that given the age of the Tenants, the length of the tenancy and that there was really only a one time incident without any threatening behavior there are no reasons to end the tenancy.

### Analysis

Section 47(1) provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia, 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, or
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Where a notice to end tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. I decline to consider incidents that occurred in 2013 as relevant given the time that has passed. Although the Witness gave evidence of banging coming from the Tenant's unit on several occasions over the past 6 months, I also consider the Witness evidence of banging while the police officer was in the unit in April 2017. This indicates to me that there may be some exaggeration of the noise coming from the upper unit or that the building has insufficient sound barriers between the units. This leaves a one-time incident where the police were only called at the urging of the Landlord who I note did not attend the building on that date to investigate the complaint. Given the context of this one time incident with the police I find on a balance of probabilities that the Landlord has not provided sufficient evidence of significant interference, unreasonable disturbance or any other cause to end the tenancy. I therefore find that the Notice is not valid and that the Tenant is entitled to its cancellation.

I must note that it appears that the Tenants are trying on their own to enforce their rights to quiet enjoyment by dealing directly with a lower tenant. I caution the Tenants against doing this. It

may be, given the evidence of a smell in the lower tenant's unit, that the Landlord must do more for its lower tenant in relation to this dispute than simply defer to the police. I encourage the Tenants to put noise complaints in writing to the Landlord and to make an application for compensation should the Landlord fail to act reasonably to ensure their right to quiet enjoyment.

As the Tenant's application has met with success I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this entitlement.

Conclusion

The Notice is cancelled.

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: June 2, 2017

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Residential Tenancy Branch