



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on February 1, 2018. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

### Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

### Background and Evidence

The Tenant said she moved into the rental unit in September 2010 on the original tenancy agreement and then the tenancy agreement was renewed on September 1, 2016 as a month to month tenancy. Rent is \$1,300.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$625.00 at the start of the new tenancy agreement dated September 1, 2016.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated January 22, 2018 by personal delivery on January 22, 2018. The Effective Vacancy Date on the Notice is February 28, 2018. The Landlord continued to say he received a complaint in January, 2018, through the Bylaw office on the municipality that a neighbour complained that the Tenant was making noise and had a fire in the back yard of the rental property. The Landlord continued to say the tenancy agreement says if the Tenant makes excessive noise it may be grounds for an eviction. The Landlord said he was not quite sure what to do as the Tenant has not had any complaints in over 4 years. The Landlord said he has a good relationship with the

Tenant and this is a good tenancy. The Landlord continued to say he felt he had to do something so he issued a 1 Month Notice to End Tenancy for Cause with the reason of a noise violation. The Landlord said he is acting on the information provided by the neighbour.

The Tenant said they did have a small bonfire on the night of January 15, 2018 and the fire department was called by a neighbour because of the fire. The Tenant said they were unaware the fires were not allowed. The Tenant said the fire was put out and the gathering ended before 11:00 p.m. on that night. The Tenant continued to say they have not received and complaints about noise and she has not received any warning letters about disturbances from the Landlord or the City Bylaws for over 4 years. The Tenant said she requested information from the RCMP about complaints at the rental property address and the complaints were from prior to 2010 which was before her tenancy. The Tenant said the neighbour who made the complaint has made complaints about other neighbours in the community as well. The Tenant continued to say she understands that the neighbour who is complaining is suing the Landlord over this. The Tenant said the complaining neighbour has being aggressive and abusive to the Tenants sons during an earlier incident about the television volume. The Tenant said this was the only other incident about noise but there were no formal complaint from the Landlord.

The Tenant said in closing that she believes the complaining neighbour is doing this to sue the Landlord for personal gain.

The Landlord said he has a good relationship with the Tenant and this is a good tenancy, but he feels he has to do something about the complaint and the neighbour suing him. As a result the Landlord issued the One Month Notice to End Tenancy for Cause based on the noise complaint from the neighbour. .

### Analysis

It is apparent from the testimony and evidence that this is a good tenancy but there are issues between the Tenant/ Landlord and the neighbour. My jurisdiction is only in matters that are covered by the Residential Tenancy Act. Consequently the parties will abide by the following decision. In Section 47 (d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant/neighbour has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant, or put the landlord's property at **significant** risk.

In this case it is my finding that the reasons given for ending the tenancy have not reached the level of **unreasonableness, significance or seriousness** required by section 47(d) of the Residential Tenancy Act. I find in favour of the Tenant and Order the 1 Month Notice to End Tenancy for Cause date January 22, 2018 to be cancelled and the tenancy is ordered to continue as set out in the tenancy agreement.

As the Tenant has been successful in this matter I order the Tenant to recover the \$100.00 filing fee for this proceeding by deducting it from the April, 2018 rent. The April, 2018 rent is adjusted to \$1,200.00.

### Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated January 22, 2018 is cancelled and the tenancy is ordered to continue as set out in the tenancy agreement.

The April 2018 rent payment is adjusted to \$1,200.00 so that the Tenant can recover the filing fee of \$100.00 for this proceeding from the Landlord.

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 14, 2018

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Residential Tenancy Branch