



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, PSF, FF

### Introduction

The tenants apply to cancel a one month Notice to End Tenancy for cause received March 27, 2018. They also seek an order that the landlord comply with the law and the tenancy agreement and that she provide a service or facility.

Neither party submitted a copy of the Notice. It purportedly states that the details of the Notice were that the tenants have shown “racism” to the landlords and to their family members.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Does the relevant evidence show on a balance of probabilities that there is good cause to end the tenancy? Does it show that the tenants have been deprived of a service or facility or that a compliance order is warranted?

### Background and Evidence

The rental unit is the three bedroom upper portion of a house. There is a two bedroom basement suite below.

This tenancy started in May 2017. The rent is \$1700.00 per month. The landlord holds an \$850.00 security deposit.

Until last September the landlord rented out the basement suite. Since the end of September members of the landlord's family have been residing there.

The landlord's daughter testifies that her two cousins live downstairs. She says the Notice in question was given to the tenants because "racism is not accepted." She did not elaborate. She alleges the tenants turned off the heat last winter and that she has had difficulty contacting them.

The tenant Mr. Z. testifies that in his opinion the landlord just wants the tenants to move out. He says he has made complaints to the landlord about usage of a common laundry room in the home by the people downstairs at unreasonable hours. He provides a log of occasions on which the basement tenants disturbed his family upstairs. He was told by the landlord to deal with it himself and to call the police.

The tenant log of events occurring in the basement discloses:

October 8 – basement occupants party past midnight, landlord contacted.

October 14 – loud noise a music late at night, landlord contacted.

October 15 – loud arguing middle of night. Mr. Z. went down to ask for quiet.

October 15 – laundry late at night (the laundry facility in the home is located under upstairs bedrooms). Mr. Z. asked male occupant to stop. He didn't.

October 25 – loud talking and arguing late at night, landlord contacted. Ms. S.P. told tenants that it was their problem and to contact the police.

November 24 – very loud TV

November 26 – laundry at 1:30 a.m.

December 3 – basement bathroom fan on all night.

December 4 – bathroom fan at 2:36 a.m.

December 8 – dryer running at 10:15 p.m.

December 18 – loud noises at 12:30 a.m. Bathroom fan runs all day. Landlord contacted.

December 21 – 1:30 a.m., loud noises, voices, TV, slamming doors. Landlord contacted.

December 30 – 12:30 a.m. loud talking. 2:20 a.m. loud music.

December 31 – 2:15 a.m. arguing, fighting, door slamming. Police called.

January 1 – 2:30 a.m. Woken by loud speaking, arguing and door slamming.

January 2 – 1:30 a.m. door slamming, shouting.

January 5 – 1:30 a.m. loud voices, door slamming.

January 14 – 11:30 p.m. loud voices and TV.

January 15 – 12:20 a.m. dryer on. Mr. Z. goes down and shuts it off.

February 3 – midnight to 4:30 a.m. party below. Mr. Z. asks for quiet. Noise increases. Police called to home twice. Landlord contacted.

March 19 - 12:15 a.m. to 1:30 a.m. dryer on. Mr. Z. goes down and shut is off but turned on again.

March 19 – Tenant file noise complaint with local government (the second complaint).

March 19 – basement occupants turn power off to two rooms upstairs. Landlord contacted.

March 23 – loud noises and TV.

March 24 – bathroom fan on all day and all night.

March 24 – 1:10 a.m. loud noise and TV.

March 25 – bathroom fan on for three days.

March 26 – lower occupants lock tenants out of laundry room.

The tenants wrote to the landlord on October 26 and again on December 4 listing the occurrences as of those dates.

On February 21 the landlord wrote to the tenants that the property was a single family dwelling and that the tenants would have to move by April 31 (*sic*), 2018 and in a second letter, informed the tenants they were not entitled to use a storage facility.

In response, Ms. S.P. states that the landlord now has a permit from the local government authorizing the basement suite.

### Analysis

#### The One Month Notice to End Tenancy

The landlord's assistant Ms. S.P. states that "racism is not accepted." She has failed to describe any incident in which racism reared its ugly head or indeed provide evidence that any occupant or the landlord was significantly interfered with or unreasonably disturbed as a result.

The landlord had failed to provide convincing evidence to support giving the tenants this Notice and so I hereby cancel it.

#### The Tenants' Claim for a Compliance Order

The tenants seek an order directing the landlord to eliminate the disturbances they are suffering as a result of the occupants living downstairs. In this regard the tenants'

evidence, including their log of incidents went unchallenged by the landlord and I accept it as a statement of the facts of the frequency and type of disturbances they have been met with after the landlord's relatives became the basement occupants.

The tenants' log paints a picture of a serious problem coming from the occupants below. Had the tenants requested monetary compensation for loss of amenity of their rental unit, it would have been granted on these facts.

It is clear that the tenants have been repeatedly and unreasonably disturbed by the conduct of the persons the landlord has permitted to occupy the basement suite. It is clear that the landlord has had repeated notice of the problem. There is no evidence that the landlord has conducted an investigation to confirm the tenants' complaints nor taken any steps to bring the downstairs occupants into line.

It is not clear whether the people living below are true tenants or merely relations being allowed to live there. In either case the landlord has fallen far short of her duty, imposed by s. 28 of the *Residential Tenancy Act* (the "Act"), to keep her tenants free from unreasonable disturbance.

Of additional concern, it appears that the laundry room is a facility provided with the tenancy and that the basement occupants can lock the tenants out of that facility. That is not a reasonable arrangement. If anything, the tenants should be able to lock the door from their rental unit into the laundry room, so as to prevent anyone gaining entry to their rental unit from the laundry room.

**I direct that the landlord take immediate steps to prevent those occupying the basement suite of this residence from creating or emitting excessive noise, whether by voice or by TV or other method after the hour of 8:00 p.m. or before the hour of 7:00 a.m. each day.**

**I direct that the landlord take the necessary steps to prevent or prohibit the basement occupants from using the common laundry room after the hour of 8:00 p.m. or before the hour of 7:00 a.m. each day.**

The Laundry and the Storage Facility

The evidence shows that the laundry and the storage facility were a facility included with this tenant, whether noted in the tenancy agreement or not and so it must be continued

or the landlord must pay the tenants compensation to discontinue it, as per s. 27 of the *Act*.

**I direct that the landlord take any steps necessary to ensure the tenants have access to and use of the laundry facility between the hours of 7:00 a.m. and 8:00 p.m. each day.**

Conclusion

The tenants application is allowed. I grant them recovery of the \$100.00 filing fee paid for this application and I authorize them to reduce their rent due, once, by the amount of \$100.00, in full satisfaction of the fee.

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: April 29, 2018

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Residential Tenancy Branch