



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes CNC

### Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenants requesting a cancellation of a One Month Notice to End Tenancy for Cause.

The Tenants confirmed that the Landlord’s name listed on the Application was actually the manager for the Landlord company. With the Applicants’ permission, the Application has been amended to reflect the correct name of the Landlord, as noted in this decision.

The Tenants appeared for the scheduled hearing. The Landlord did not attend this hearing, although I left the teleconference hearing connection open for 10 minutes in order to enable the Landlord to call into this teleconference hearing scheduled for 9:30 a.m. The Tenants were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenants and I were the only ones who had called into this teleconference.

The Tenants explained that they had served the building manager in person with the Notice of Hearing on July 9, 2018 and that they were told to deliver it to the Landlord corporation, which they did, also by handing it to the owners of the corporation. I am satisfied that the Landlord was served in accordance with section 89(b) of the Act and that it chose not to send an agent to attend the hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

### Issues to be Decided

Are the Tenants entitled to a cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47(4) of the Residential Tenancy Act (“Act”)?

If not, is the Landlord entitled to an Order of Possession, pursuant to section 55 of the Act?

### Background and Evidence

The tenancy began November 15, 2016 as a fixed one year term to end November 30, 2017; it reverted to month-to-month thereafter. Monthly rent was set at \$775.00 payable on the first of each month, and a security deposit of \$387.50 was paid.

The Landlord served a One Month Notice to End Tenancy dated June 26, 2018 by posting it on the Tenants' door on June 26, 2018; it had an effective date of July 31, 2018. The reason given was that the Tenants significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Tenants filed this dispute application on July 5, 2018, ten days after the date of the Notice. The Tenants state that in the two years they have resided in the rental unit, this is their first Notice to End Tenancy for a noise complaint.

They suspect a neighbor living below who moved in about a year ago and complains about everything; he works night time shifts and the Tenants suspect that he is complaining about their normal level of daytime noise.

However, the Tenants have received no formal letter of complaint from any resident of the building. The Tenants testified and submitted a written statement indicating that they are careful to keep noise to a minimum although they do talk and walk across the floors in the normal course of the day. They deny making any unreasonable noise.

### Analysis

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Landlord did not call into the conference call by 9:40 a.m., and I find that the Landlord was effectively served with this Notice of Hearing, I chose to proceed with the hearing in its absence.

Under section 47 of the Act, a landlord may end a tenancy with One Month written notice to the tenants:

**47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:...*

*(d) the tenant or a person permitted on the residential property by the tenant has*

*(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*

*(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*

*(iii) put the landlord's property at significant risk;...*

*(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

I find that the Tenants disputed this notice within the required 10 day timeline, as per section 47(4). The Landlord has not appeared to provide any evidence in support of its reasons to evict these tenants and accordingly, I am prepared to cancel the Notice to End Tenancy for Cause.

The tenancy shall continue and the Notice dated June 26, 2018 is of no force or effect.

### Conclusion

The One Month Notice to End Tenancy for Cause is hereby 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: August 22, 2018

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Residential Tenancy Branch