



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC OPC FFT

### **Introduction**

Both parties and witnesses attended the hearing and gave sworn testimony. The One Month Notice to End Tenancy is dated March 28, 2019 to be effective April 30, 2019 and the tenant confirmed it was served personally on March 28, 2019. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution dated April 5, 2019 and the landlord agreed they received it. Both parties agreed they received the evidence of each other. I find the documents were legally served for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;
- b) To recover the filing fee for this application pursuant to section 72.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in June 30, 2016, it is now a month to month tenancy, rent is \$1378 a month with an increase scheduled for July 1, 2019. A security deposit of \$650 was paid.

Where the tenant has applied to cancel a Notice, Rule 11.1 of the Residential Tenancy Rules of Procedure requires the landlord to provide their evidence first as the landlord has the burden of proving sufficient cause to end the tenancy for the reasons given on the Notice.

The landlord served a Notice to End Tenancy for the following reasons:

The tenant or a person permitted on the property by the tenant has;

- a) significantly interfered with or unreasonably disturbed another occupant or the landlord;
- b) seriously jeopardized the health, safety or lawful right of another occupant or the landlord;
- c) put the landlord's property at significant risk.
- d) has engaged in illegal activity that has, or is likely to:
  - (i) damage the landlord's property;
  - (ii) adversely affect the quiet enjoyment, security, safety or physical wellbeing of another occupant or the landlord.

The landlord provided evidence of the tenants' noisy music, quarrelling and smoking over the past two years and how this has affected her and university students who rent from her. The tenant denied the allegations, said they were lies and fabrications by the landlord as she did not like the female tenant. The male tenant said that when a letter from the landlord was delivered in December 2018 asking them to end their tenancy, he was extremely upset and this ruined their brief vacation. The agent of the landlord said this letter was an attempt to resolve the problem amicably as the landlord's health was being affected. It was not successful as they denied everything and the issues continued so the Notice to End Tenancy was served.

The landlord put texts in evidence showing complaints of noise and smoking were made in June 2018 and 3 in October 2018. The male tenant said it was not them smoking, they do not smoke on the property if any windows are open and they always responded respectfully. The tenants agreed the landlord had made complaints about their loud music but said they always responded respectfully and reduced the noise. The landlord said she was kept awake many nights and her health suffered. She contacted her agents to help her with the problem.

While the landlord was away for several months, the university students who were staying with her kept a log which is in evidence. It records 9 occasions in January 2019, 11 occasions in February and 4 in March 2019 when the noise of music, screaming or arguing was extremely loud. They explain in letters in evidence how this has affected their studies. The landlord said they have now gone home for the summer but have notified her they are not returning because of the problems caused by these tenants.

The male tenant said the landlord or her agent prompted the students to write the log and letters and they are fabrications. The female tenant said she does not smoke because of asthma and the male tenant said they only smoke on the property if all windows are closed; otherwise they smoke in their car.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

**Analysis:**

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant.

I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the causes cited, namely, that they or a person permitted on the property by them has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health, safety or lawful right of another occupant or the landlord;

I find the students in their letters and log support the landlord's credibility and sworn testimony that the tenants play loud music and engage in yelling and arguing. I find the weight of the evidence is that this behaviour of the tenant significantly disturbs the peaceful enjoyment of the landlord and other occupants in the home as they are kept awake or their studying is disturbed by this behaviour. One tenant said she has had to resort to going to the university campus late at night so she can study. I find the log kept while the landlord was away is persuasive that the loud behaviour continued even after the agent had requested it stop. Although the male tenant contended that the students did not approach him to turn the music down, I find it credible as the agent said, that they were nervous about approaching them as they had witnessed their loud arguments and were intimidated. I find the tenants' behaviour denied the students their lawful right to study in their own home and significantly disturbed them and the landlord.

Although the tenant claimed the landlord's evidence was fabricated, they did agree that they had received the texts in evidence from the landlord regarding noise and smoking. I also do not find it credible that she persuaded several students to lie for her. I find the detailed account of their problems and their log credible and find the students' evidence supports the landlord's credibility.

I find section 47 lists causes to end a tenancy and any one of which is sufficient if proven to end a tenancy. I find the landlord has provided sufficient evidence to prove

that the tenants' behaviour has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health, safety or lawful right of another occupant or the landlord. I find this cause is sufficient to end the tenancy so I decline to comment further on smoking, parking and other comments made in the hearing.

The landlord generously agreed to accept an Order of Possession effective June 30, 2019 and the tenant said they would obey it. I find the tenant is obligated to pay rent for June 30, 2019 or risk a 10 Day Notice to End Tenancy pursuant to the Act.

**Conclusion:**

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed without recovery of the filing fee due to lack of success. The tenancy ended on April 30, 2019 pursuant to the Notice. An Order of Possession is issued to the landlord effective June 30, 2019 as agreed by the parties. .

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: May 23, 2019

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Residential Tenancy Branch