



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT

### Introduction

On February 4, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that the Landlord was served with the Notice of Hearing and evidence package by hand on or around February 10, 2021 and the Landlord confirmed that this package was received. The Tenant did not confirm if the Landlord could listen to his digital evidence prior to sending it, pursuant to Rule 3.10.5 of the Rules of Procedure. However, the Landlord confirmed that he was able to review all of the Tenant’s evidence. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

The Landlord advised that he did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on March 1, 2020, that rent is currently established at \$700.00 per month, and that it was due on the first day of each month. A security deposit of \$350.00 was also paid. A partial copy of the signed tenancy agreement was submitted as documentary evidence.

The Landlord advised that the Notice was signed on January 22, 2021 but it was served to the Tenant by putting it under his door on January 25, 2021. The Tenant confirmed that he received this Notice on January 25, 2021 and he did not have any position with respect to how the Notice was served. The reason the Landlord served the Notice is because the:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Notice indicated that the effective end date of the tenancy was February 28, 2021.

The Landlord advised that he rented the entire property and he was given authorization from the owner to rent out portions of the property and act as a Landlord. He stated that since March 4, 2020, another resident of the property has complained of the Tenant making “cooking noises” late at night. This resident eventually made complaints to the owner and the property manager, and the Landlord was asked by them to give the Notice to the Tenant. He stated that the resident who made the complaints provided a recording of the noise that she was complaining about, but he acknowledged that it could not be determined that the noise was attributed to the Tenant.

He submitted that when he received complaints from this resident, he would investigate and then speak with the Tenant about these issues. He also sent messages asking the Tenant to refrain from making noise late at night. He stated that the Tenant altered his behaviour, but the resident would continue to complain regardless.

The Tenant advised that the Landlord did not submit any documentary evidence to support his allegations. He stated that there is only one resident of the property that is making these complaints. He refuted the Landlord’s claims that these complaints were actively investigated by the Landlord, and the Landlord then confirmed that he did not make any efforts to corroborate the legitimacy of the resident’s complaints. The Tenant advised that the resident making the complaints is sensitive and lives next door to the kitchen. He stated that he works late, and when he comes home, he makes food for himself.

He submitted that after the resident complained, he attempted to adapt his behaviour to find a compromise. He has even refrained from eating on occasion so that he would not disturb the resident. He is not doing anything other than routine actions that are associated with preparing food. He stated that the resident magnifies these small issues and continues to complain unnecessarily. He referenced two audio recordings which he claims supports his position; however, the contents of those files were not audible. He stated that in these recordings, the Landlord confirmed that the resident is the problem and that he only served the Notice because the property management company advised him to.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 55 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

#### ***Landlord's notice: cause***

**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,*

Regarding the validity of the reason indicated on the Notice, I find it important to note that the onus is on the party issuing the Notice to substantiate the reason for service of the Notice. When reviewing the totality of the evidence before me, it is apparent, in my view, that there has been ongoing conflict between the Tenant and another resident of the property.

As the onus is on the Landlord to prove that the Tenant acted in a manner to warrant service of the Notice, I do not find that the Landlord has submitted sufficient evidence to demonstrate that he ever investigated the complaints of this resident to determine what the noise was, who was responsible, and if this noise or disturbances were in fact unreasonable. Furthermore, he has not provided sufficient evidence to implicate the Tenant as the source of the noise, nor has he provided compelling or persuasive evidence to demonstrate that this noise was unreasonable.

The consistent evidence before me is that a resident has complained to the Landlord about a noise issue; however, I do not find that the Landlord has sufficiently substantiated the grounds for ending the tenancy. As such, I am not satisfied of the validity of the Notice and I find that the Notice is cancelled and of no force and effect.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. The Tenant is permitted to withhold this amount from the next month's rent.

### Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of January 22, 2021 to be cancelled and of no force or effect.

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 4, 2021

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Residential Tenancy Branch