



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. The landlord stated that none of the 16 late documentary evidence files were served to the tenant. The landlord stated that he thought that by uploading it to the Residential Tenancy Branch online platform that all parties would have access to it.

I accept the undisputed affirmed evidence of both parties and find that the landlord was sufficiently served with the tenant's notice of hearing package and the submitted documentary evidence. However, the landlord confirmed that none of his submitted documentary evidence was served to the tenant. On this basis, I find that the landlord failed to comply with section 88 of the Act and the tenant was not given an opportunity to review and respond to the landlord's submissions. The landlord's documentary

evidence is excluded from consideration in this hearing as it is considered highly prejudicial to the tenant.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?

Is the tenant entitled to recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that on August 31, 2021, the landlord served the tenant with the 1 Month Notice dated August 31, 2021 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of October 1, 2021 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- the tenant has engaged in illegal activity that has, or is likely to:
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The details of cause state:

*-Police called to unit multiple times by other occupants.*

*-Unruly behaviour.*

[reproduced as written]

Discussions with the landlord regarding the reasons for cause selected revealed that he does not know of any illegal activity engaged by the tenant that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord. On this basis, the landlord's second reason for cause is dismissed with leave to reapply.

The landlord stated that he has received numerous complaints from other tenants of screaming/banging all night caused by the tenant. The landlord stated that on:

August 1, 2021  
August 5, 2021  
August 15, 2021  
September 3, 2021  
November 3, 2021

The police attended the property due to multiple noise complaints and threats made. The landlord stated that he has received numerous text messages from other occupants complaining about the tenant.

The tenant argued that while the police were called and attended, no action has ever been taken by the police. The tenant stated that they just talked. The tenant stated that no violation tickets have ever been issued. The tenant stated that there has never been any excessive noise and he feels that the other tenants are too sensitive to the normal sounds of a multiple unit residence.

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

Both parties confirmed that the landlord served the tenant with the 1 month notice dated August 31, 2021 by posting it to the rental unit door.

The landlord has claimed that he has received multiple noise complaints from other occupants. The tenant has argued that no excessive noises have ever been made and that the other occupants are too sensitive to normal noise in the rental property.

I find on a balance of probabilities that the landlord has failed to provide sufficient evidence to satisfy me that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The landlord relied solely on his direct testimony with no supporting evidence. The tenant has been successful in cancelling the 1 month notice dated August 31, 2021.

The tenant is also entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I authorize the tenant to withhold \$100.00 from the next monthly rent upon receipt of this decision.

Conclusion

The tenant's application to cancel the 1 month notice dated August 31, 2021 is granted.

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: November 12, 2021

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Residential Tenancy Branch