



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on July 29, 2021. I note the Notice refers to the year 2022; however, this was an obvious error and I correct that error pursuant to section 68 of the Act..

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing. All parties confirmed under affirmation that they were not recording the hearing.

In this case, the tenant has listed RN as a tenant in the application. RN is the child of the tenant and not listed as a tenant on the tenancy agreement. RN is an occupant and has no legal right or obligation under the Act. I have removed RN from the style of cause.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Should the Notice be cancelled?

### Background and Evidence

The tenancy began on September 1, 2019. Rent in the amount of \$1,360.00 was payable on the first of each month. The tenant paid a security deposit of \$680.00 and a pet damage deposit of \$680.00.

The parties agreed that the Notice was served on the tenant. The reason stated in the Notice was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord testified that the tenant is harassing the other occupants by frequently calling the police, and no disturbances are found. The landlord stated that the police were called on January 14, 2021, February 14, 2021, April 10, 2021, May 8, 2021 and July 22, 2021.

The landlord testified that on April 16, 2021, they had another hearing where the tenant's application was dismissed. I have read that decision and the Arbitrator determined that the noise was a temporary inconvenience and not an unreasonable disturbance.

The tenant testified that it is not normal household noises that they are hearing. The tenant stated that they have called the police at least on five occasion, because of loud banging which wakes them from their sleep, and there is fighting and ongoing noise. The tenant stated there are 5 people living in the other unit and that this is a townhouse, and the walls connect the two homes.

The tenant testified that they have tried to record the noise, even by putting their device up against the wall; however, it is not recordable and that they would have to be awake all night if they were trying to record when the banging would occur.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has not provided sufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord and
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

In this case, the landlord has not submitted any documentary evidence, such as a letter from the other occupants to support they feel harassed, and that the complaints are unfounded.

While I find it more likely than not that what the tenant is hearing is normal household noises, as this is a wood construction townhouse and the noise it not recordable even when there is alleged to be ongoing fighting; however, without any evidence from the other occupants, I find the landlord has not met the burden of proof. Therefore, I grant the tenant's application to cancel the Notice.

However, **I caution the tenant** that they are to cease calling the police on the other occupants unless it is for emergency purposes. Should the tenant have proof of noise complaints, such as audio recordings of unreasonable and ongoing disturbances they can bring that to the landlord's attention. I find it unreasonable that the police have attended on five occasions in a seven-month period.

Should in the future the tenant be found to be making unfounded police reports, the landlord is at liberty to issue a new One Month Notice to End Tenancy for Cause, and a copy of this Decision and the previous Decision can be submitted as evidence.

As I have granted the tenant's application, I find the tenant is entitled to recover the filing fee. I authorize the tenant a onetime rent reduction of \$100.00 from a future rent payable to the landlord to recover the cost of the filing fee.

Conclusion

The tenant's application is granted. The tenant is entitled to a onetime rent reduction from a future rent payable to the landlord to recover the cost of the filing fee.

The tenant is cautioned they are to cease calling the police on the other occupants, unless for emergency purposes.

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: December 13, 2021

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Residential Tenancy Branch