



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

Under section 58 of the Residential Tenancy Act (the “Act”), this hearing dealt with the tenant’s March 22, 2023, application to the Residential Tenancy Branch for:

- (i) an order cancelling a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 47 of the Act; and
- (ii) authorisation to recover the cost of the filing fee under section 72 of the Act.

### Issues

- 1. Is the tenant entitled to an order cancelling the Notice?
- 2. If not, is the landlord entitled to an order of possession?
- 3. Is the tenant entitled to recover the cost of the filing fee?

### Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began February 1, 2023. Rent is \$1,500.00 due on the first day of the month. The landlord currently retains a \$750.00 security deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on March 16, 2023, by delivering to the tenant in person, who was present to receive it. Page two of the Notice indicates that the tenant or a person permitted on the property by the tenant has: significantly interfered with or

unreasonably disturbed another occupant or the landlord. All pages of the Notice were served and submitted into evidence.

The landlord affirmed that:

- the tenant has been making too much noise.
- the tenant was warned by the landlord before the tenancy started that the walls of the rental unit were thin, and that the landlord could hear everything through the walls.
- on the first day of the tenancy (February 1, 2023), the tenant had many guests over and the gathering turned into a loud party.
- on the second day of the tenancy (February 2, 2023), the tenant had guests over again and they were very loud.
- the tenant was having intercourse in the rental unit frequently, which the landlord could hear through the walls.
- the landlord did not provide any documentary evidence to substantiate the noise.
- the landlord lives in the upstairs suite and the tenant lives in the basement suite.

The tenant affirmed that:

- the tenant has not been particularly loud in the rental unit.
- in relation to the first day of the tenancy (February 1, 2023), the tenant had multiple guests over as the tenant's friends were helping the tenant move in, which can be loud. The tenant's guests were gone by 9:30 P.M.
- in relation to the second day of the tenancy (February 2, 2023), the tenant had two friends over for dinner. The tenant and the tenant's friends were having a normal conversation and not being particularly loud.
- the tenant started dating someone new in March 2023 and would sometimes invite this person over to the rental unit. The tenant and her new partner would have normal intercourse at the rental unit. The tenant and her new partner also made an effort to be quieter than they would normally be during intercourse.

### Analysis

Under section 47(1)(d) of the Act, a landlord may end a tenancy by serving a One Month Notice to End Tenancy for Cause if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

I find that the tenant is entitled to an order cancelling the Notice because:

- (i) the activities that the landlord has complained about, such as having guests visit for meals and having intercourse in the rental unit, are activities that the tenant is entitled to engage in during the ordinary and lawful enjoyment of the premises; and
- (ii) the landlord did not provide any documentary evidence of the noise to substantiate that the noise being made has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

As there is no evidence to confirm that the noise being made by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, I am cancelling the Notice.

In addition, according to Policy Guideline 6 (Entitlement to Quiet Enjoyment), a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.

The landlord is reminded of the tenant's right to be free from substantial interference with the ordinary and lawful enjoyment of the premises.

Since the tenant was successful in its application, the tenant's application to recover the cost of the filing fee under section 72 of the Act is granted.

### Conclusion

The application is granted. The tenancy shall continue until it is ended in accordance with the Act.

The tenant may withhold \$100.00 from a future rent payment on ONE occasion, in full satisfaction for a return of the filing fee.

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: July 12, 2023

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Residential Tenancy Branch