



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee.

Both parties and their witnesses appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, to cross-examine the other party, and make submissions to me.

On a procedural note, the witnesses were affirmed and asked to leave the conference call hearing out of audible range.

As a preliminary issue, the Tenant's Application was originally filed to dispute a 1 Month Notice to End Tenancy, dated January 25, 2011, served by the Landlord. However, the Landlord submitted a cancellation of that Notice and issued a subsequent Notice, to which the Tenant filed an amended Application. The Landlord's original Notice of January 25, 2011 therefore was not considered and the hearing continued with regard to the Notice dated January 28, 2011.

### Issue(s) to be Decided

Is the Tenant entitled to an Order cancelling the 1 Month Notice to End Tenancy for Cause?

### Background and Evidence

The rental unit is one of four units, which had been converted from a formerly single family, older dwelling.

I heard testimony from the Tenant that she originally moved into the 2 bedroom rental unit in July 2006, rent began at \$1,200.00 per month and is currently \$1,380.00 per month. I heard testimony that the Landlord is holding a security deposit from the Tenant in the amount of \$312.50.

I heard testimony from the Tenant that the original Landlord and owner, sold the home to the current Landlord and her sister, who took ownership in June 2010. I heard testimony that the Landlord and an occupant live in another unit in the home.

**Tenant's Relevant Evidence:**

- Residential Lease Agreement, executed June 19, 2006 between the former owner, the Tenant and another tenant living in the rental unit at the time;
- A statement from the occupant in the rental unit, dated January 27, 2011;
- An email from the Landlord to the tenants in the building concerning a laundry schedule, including the occupant;
- An email from the Landlord to the tenants in the building concerning an insurance inspection and plumbing problems with the laundry, including to the Tenant and the occupant;
- An email from the Landlord to the Tenant stating that the Landlord wanted post dated rent cheques for January –May, from the Tenant and the occupant;
- An email from the occupant to the Landlord, supplying the occupant's email address and a request to be "kept in the loop about happenings around the house;"
- An email request from the Tenant to the Landlord requesting the outside porch light and inside hallway light be left on at night;
- Text messages from the Landlord to the Tenant about music in the rental unit;
- An email from the Tenant to the Landlord, requesting the Landlord to refrain from text messaging her and to address the issue with the outdoor and hallway lighting;
- An affidavit from the former owner of the building, the Tenant's original landlord;
- A Craigslist advertisement dated January 27, 2011, indicating the rental unit for available lease on March 1, 2011, listing the rental unit as a 2 bedroom with a maximum of 2 adults and an available showing date and time. Included in the advertisement was the monthly rent of \$2,400.00.

**Landlord's relevant evidence:**

- The 1 Month Notice to End Tenancy, dated January 28, 2011;
- Residential Lease Agreement, dated March 20, 2010, between the former owner and the Tenant;
- A timeline of Tenant's alleged noise infractions from January 28- 31, 2011;
- An email between the Landlord and the Tenant regarding the laundry facility;
- Text messages concerning the Tenant's music volume;
- A text message from the Tenant requesting the Landlord cease text messaging the Tenant;
- A letter from the Landlord's occupant informing the Landlord that the noise is disrupting his ability to work from home.

Pursuant to the rules of procedure for the *Residential Tenancy Act* (the "Act"), the Landlord proceeded first in the hearing and testified as to why the Tenant had been served a 1 Month Notice to End Tenancy.

The Landlord issued a 1 Month Notice to End Tenancy for Cause (the "Notice") to the Tenant on January 28, 2011, by slipping under the door, with a stated effective move out date of March 1, 2011.

The causes as stated on the Notice alleged that the Tenant (1) allowed an unreasonable number of occupants in the unit, (2) significantly interfered with or unreasonably disturbed another occupant or the landlord, and (3) breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In support of the first cause listed in the Notice, I heard testimony from the Landlord that the Tenant allowed another occupant to live in the rental unit, causing additional strain on the outdated electrical system. I heard testimony from the Landlord that she did not consider the other occupant to be a tenant, but only someone who was helping out the Tenant. I heard testimony from the Landlord she had contacted an electrician to upgrade the system due to the number of problems with the breakers, a further indication that the rental unit was suitable for only one occupant.

Upon query to explain the Craigslist advertisement of the rental unit, the Landlord stated that it was a mistake her sister made by putting the advertisement on the website and that it was removed 2 days later when she learned of it. The Landlord admitted that her sister was a co-owner of the building.

Upon query, the Landlord could not supply the name of any electrician she contacted about upgrading the system, but I heard testimony from the Landlord that her occupant handled these matters and he would know the name. I note that I heard the Landlord ask her occupant the name of the electrician and when asked where the occupant was for the hearing, the Landlord stated that he was in another room to where she had walked.

Upon cross examination from the Tenant's advocate, the Landlord admitted she had a conversation with the Tenant about showing the rental unit following the Craigslist advertisement.

Prior to the testimony of the Landlord's witness, the Tenant's advocate requested his testimony be stricken due to the witness' presence in the hearing. I allowed the testimony, reserving my decision of the request until after the hearing.

The witness testified that there had been problems with the electricity as early as August and that the system could not handle the number of occupants. Upon query the witness stated that he planned on obtaining some quotes, but had not done so as of the day of the hearing.

In support of the second cause listed in the Notice, I heard testimony from the Landlord that the home was a 1910 house, with no sound proofing. The Landlord stated she

believed the Tenant was creating a “ruckus” due to the fact there has been an ongoing issue about the hallway and porch lighting. The “ruckus” included the Tenant running up and down the wooden stairs which lead to the main common area, slamming doors and playing her music too loud, all on purpose.

In support of the third cause listed in the Notice, I heard testimony from the Landlord that the Tenant was the only one listed on the tenancy agreement and that she did not believe anyone else lived there as she has only seen the other occupant approximately three times.

Upon query, the Landlord stated that she sent the occupant emails about the issues of the house only out of courtesy.

Upon query, the Landlord admitted she accepted equal monthly rent from the Tenant and the occupant.

I heard testimony from the Tenant that to her knowledge, there have never been any electrical issues, that she plays her music at the level to which she has always played it, the level of the music has not increased and denied running up and down the steps and slamming doors.

The Tenant testified that the Notice issued by the Landlord stemmed from her request to have the outdoor and hallway light left on after dark, and that her reason for so doing was due to the unsafe neighbourhood surrounding the rental unit. The Tenant further testified that the lights had always been left on during her nearly five year tenancy, as it is a safety issue and that she does not feel safe coming into the dark house at night.

The Tenant testified that she received text messages from the Landlord about the volume of music while she was out of town, leading her to request the Landlord not communicate with her this way.

The Tenant testified that she has always had a roommate live with her and that the Landlord was well aware the occupant was a tenant. The Tenant affirmed the statements in the former owner’s affidavit, that the omission of the occupant’s name from the lease agreement was a clerical error and that the document itself lists “tenants.”

I heard testimony from the Tenant’s witness, the occupant, that she does in fact reside in the rental unit and since July 2010, she has paid equal rent by separate cheques to the Landlord.

The witness further testified that she receives emails from the Landlord about tenant related issues of the house, that the music is being played at the level it always has and that the Tenant is not running up and down the stairs and slamming doors.

I heard testimony from the witness that the issue of no lighting has become a safety concern, due to the dark house and questionable neighbourhood.

### Analysis

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

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Once the Tenant made an Application to dispute the Notice, the Landlord became responsible to prove the Notice to End Tenancy is valid.

In weighing the evidence of the parties, I prefer the testimony of the Tenant over the Landlord as I found the Landlord's testimony lacked veracity. In reaching this conclusion, I am persuaded by the Landlord's statements about the Craigslist advertisement. The Landlord testified at length about the need for updated electrical work before the rental unit was suitable for 2 occupants, yet advertised the rental unit for two occupants, shortly after issuing the first Notice to End Tenancy and while the end of this tenancy was in doubt. Casting further doubt on the Landlord's credibility was her testimony that the advertisement was a mistake and had it removed, but admitted that she spoke to the Tenant about a showing.

Perhaps most compelling of all was the Landlord advertising the monthly rent for the rental unit as \$2,400.00, which is \$1,020.00 more per month than she currently receives from the Tenant and occupant.

In ruling on the Advocate's request of exclusion of the witness' testimony, I have decided to allow the testimony as it further discredits the Landlord's testimony. In reaching this conclusion, the witness stated that there have been serious problems with the electrical system since August 2010, but admitted that neither he nor the Landlord have obtained quotes from an electrician prior to re-listing the rental unit and do not have the permits to perform the work.

As to the issue of noise disturbance, in the absence of proof by the Landlord, I prefer the testimony of the Tenant and I find that the Tenant was not making unreasonable noise or creating a disturbance. Rather the testimony and the evidence leads me to find on a balance of probabilities that the Landlord's requests were in retaliation against the Tenant for addressing the issue of night time lighting.

As to the issue of the clerical error in the lease in omitting the number of occupants in the rental unit, the Landlord provided contradictory testimony that she didn't know the occupant was a tenant, yet she accepted rent cheques since July 2010 and demanded rent cheques for 2011 from the occupant. Further the Landlord transmitted tenant

related communication to the occupant. In testimony, the Landlord referred to the Tenant and occupant as "great tenants." Therefore on a balance of probabilities I find the Tenant's tenancy agreement included two occupants and, pursuant to Section 62 of the Act, I order that the tenancy agreement be corrected to include this term and all additional standard terms required under the Act.

Given the above, I find on a balance of probabilities that the Notice to End Tenancy was issued to the Tenant for the purpose of an illegal rent increase and for retaliation for the Tenant bringing forth a concern about the premises. Therefore, **I order the 1 Month Notice to End Tenancy for Cause issued by the Landlord be cancelled and this tenancy continues.**

Section 28 of the Act deals with a tenant's right to quiet enjoyment. Pursuant to a tenant's right to quiet enjoyment, a landlord must not harass or cause the tenants to be harassed.

I accept the testimony and evidence of the Tenant that she was harassed by the Landlord and I **find** that the Landlord has interfered with the Tenant's right to quiet enjoyment of her rental unit by making unsubstantiated and retaliatory requests to reduce her music and noise level.

I make no finding of a monetary compensation for devaluation of the tenancy as that issue is not before me; however, pursuant to section 62 of the Act, the Landlord is **ordered** to adhere to the terms of the Act, when communicating with the Tenant and for other dealings with the tenancy.

I find the Tenant was successful with her Application and I award her the filing fee. The Tenant is **allowed** to deduct **\$50.00** from the March 2011 payment of rent.

### Conclusion

The Landlord's One Month Notice to end Tenancy for Cause issued January 28, 2011, is not valid and not supported by the evidence and the Tenant is granted an order dismissing the Notice to End Tenancy.

I order the Landlord comply with the Act and direct that the Tenant be given quiet enjoyment of the rental unit and premises.

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: February 08, 2011.

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Residential Tenancy Branch