



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and his support; and the landlord.

During the hearing, the landlord did not verbally request an order of possession should the tenant be unsuccessful in his Application.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord provided the following documents into evidence:

- A copy of a tenancy agreement signed by the parties on May 3, 2012 for a month to month tenancy for the monthly rent of \$750.00 due on the 1<sup>st</sup> of each month with a security deposit of \$325.00 paid;
- A copy of a 1 Month Notice to End Tenancy for Cause issued on December 19, 2012 with an effective vacancy date of January 31, 2013 citing the tenant or a person permitted on the property by 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; and 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 landlord submits that she has had numerous complaints regarding this tenant, not only in during this tenancy but in a previous tenancy as well. In fact, the landlord submits that it was as a result of complaints in the previous tenancy that she had the tenant move to another residential property that is closer to her own so she could keep closer watch on the tenant.

The tenant submits that he was unaware of any complaints during the previous tenancy other than that his previous neighbouring tenants did not like him. The tenant does not acknowledge any problems in the previous tenancy.

The landlord submits that she has provided several verbal and written warnings to the tenant regarding his behaviour that includes speaking loudly, banging; using laundry late at night.

The landlord provided copies of the written warnings she provided to the tenant on December 15, 2012 and December 16, 2012. Both documents are entitled "Notice to Tenant" and quote "The Residential Tenancy Act – Grounds for Termination Sec. 36(1)."

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy 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, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

The landlord has provided no evidence or testimony that the tenant was engaged in any illegal activity at all. As such, I find the landlord has failed to establish this as a ground for ending the tenancy.

I find that the landlord has established the tenant's behaviour has been disturbing to other tenants in the residential property and that that behaviour includes doing laundry later than midnight; speaking loudly and banging noises at unreasonable hours.

From the evidence and testimony provided, I accept the landlord provided the tenant with two written notices regarding his behaviour, however I also note that those warning letters provided inaccurate information regarding the *Act*.

The warnings quote Section 36 of the *Act* as the authority that would be used to end the tenancy. Section 36 of the *Act* speaks to the consequences for a tenant and landlord if a move out condition inspection report requirements are not met and as such, I find these warnings to be misleading, at best.

The landlord has provided some documentary evidence of complaints about the tenant's behaviour from other tenants and former neighbours and only two written warnings to the tenant are dated December 15 and 16, 2012. The landlord's Notice was issued on December 19, 2012.

While I accept the landlord has provided written warning that the tenant needs to change his behaviour or that his tenancy may end, I find the landlord failed to provide the tenant with adequate time to adjust the unacceptable behaviour.

Further, with specific reference to the laundry issue, I find the tenancy agreement contains no clauses specifying time for use of the laundry facilities. However, as long as the hours of use of laundry facilities are posted by the landlord in a conspicuous place and they do not represent a restriction of a service provided, all tenants must obey the hours of use.

For the reasons noted above, I find the landlord has failed to establish she has caused to end the tenancy.

### Conclusion

I grant the tenant is allowed to cancel and disregard the 1 Month Notice to End Tenancy issued on December 19, 2012 and find the tenancy will remain in full force and effect. I caution the tenant however, that the landlord has provided sufficient warning that should the tenant commit even one additional infraction she would have cause to end the tenancy.

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: January 28, 2013

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Residential Tenancy Branch

