



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy – Section 47;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

The Tenant states that no evidence package was received from the Landlord. The Landlord confirmed that the evidence package provided to the Residential Tenancy Branch (the “RTB”) was not provided to the Tenant.

Rule 3.15 of the RTB Rules of Procedure provides that Respondent evidence that is intended to be relied on at the hearing must be served on the Applicant. As the Landlord did not provide the Tenant with a copy of the evidence package I find that I may not consider the evidence package provided to the RTB in making determinations of the dispute.

### Issue(s) to be Decided

Should the notice to end tenancy be cancelled?

Is the Tenant entitled to compensation for loss of laundry machines?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The tenancy of one of three units in a house started on or about March 1, 2015. Rent of \$850.00 is payable on the first day of each month. Use of a washer and dryer is included in the rent. On February 1, 2015 the Landlord gave the Tenant a one month notice to end tenancy for cause (the "Notice"). The reason stated on the Notice is that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The Landlord states that about 5 months ago the Tenant started to harass the upper tenants by knocking on their doors and swearing at them. The Landlord states that this occurred a few times, including just recently when the Tenant gave the upper tenants a written legal notice about the noise.

The Landlord states that the tenant in the adjoining unit made a complaint about two months ago that the Tenant was taking photos through a window. The Landlord states that when confronted the Tenant denied taking any photos. The Landlord states that another incident occurred where the Tenant pushed and used abusive language towards the adjoining tenant. The Landlord states that the adjoining tenant complained about the Tenant shooting a gun off inside the unit.

The Landlord states that he has spoken with all parties to try and resolve the conflicts. The Landlord states that the Tenant has a different attitude than the other tenants and that the Landlord is concerned about the potential for harm. The Landlord states that each of the other tenants has told the Landlord that they are afraid of the Tenant and would move if the Tenant remained.

The Tenant states that he was concerned that the adjoining tenant was leaving the stove burners on for long periods of time for drug use. The Tenant states that on one

occasion the burners were left on for 6 hours causing the Tenant's alarm to go off. The Tenant states that he took a video to show the Landlord but that the Landlord would not accept it.

The Tenant states that when the Landlord was asked for reasons for the Notice the Landlord said that it was because they complain too much. The Tenant states that the Landlord gave no other reasons to the Tenant for the Notice and the Tenant did not know until any other reasons until this hearing.

The Tenant states that the other tenants have not been harassed and could not have been since the Tenants have been in and out of the hospital with illnesses. The Tenant states that talks have occurred with the other tenants outside but that there have never been any threats or pushes. The Tenant states that if this occurred there would have been complaints to the police and this has not occurred.

The Tenant states that the upper tenants were warned several times about the loud noise they make every weekday morning at 6:00 a.m. and that the Landlord has done nothing. The Tenant states that they have not disturbed the Landlord other than to make valid complaints and that the only complaint made about the side tenant was in relation to the burners and safety. The Tenant states that he has air soft guns as a hobby and for repairs. The Tenant states that that he uses the guns only indoors in order to test the scopes as they cannot be used outdoors. The Tenant states that he shoots the plastic ball bullets in a closed off hallway into Styrofoam.

The Tenant states that the washing machine stopped working at the beginning of January 2016 and that although the Landlord was informed immediately the Landlord did not repair it three to four weeks later. The Tenant states that due to their illness they had to send their laundry out for cleaning and that it cost \$113.59. The Tenant claims this amount in compensation, provides an invoice and provides a copy of a text dated February 1, 2016 from the Landlord informing the Tenant that the laundry was working. The Landlord states that a repair person was initially called in shortly after the problem

was reported and that as no repairs could be made the Landlord has to find a used machine on-line. The Landlord states that the machine was repaired by the second week of January 2016. The Landlord states that the Tenants are claiming an excessive amount as the upper tenants only spend \$30.00 for the cost of their laundry for 5 people over the two weeks.

### Analysis

Section 47(1) provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. Where a notice to end tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason indicated on the Notice.

I accept the Tenant's persuasive evidence that there are noise issues when the upper unit tenants walk on the hardwood floor early in the morning and that the adjoining tenant may be acting in a dangerous manner by its use of the stove elements. I do not consider the making of such complaints about these incidents to be a disturbance to the Landlord who is required under the Act to provide the Tenant with quiet and safe enjoyment of the unit. I find therefore that there is no evidence to support that the Landlord has been disturbed.

Given the Tenant's own evidence of warning the upper tenants I accept that the Tenant is strongly assertive and has confronted the other tenants and in doing so has disturbed these tenants. However the Landlord's evidence is that this occurred only a few times. This does not indicate an unreasonable disturbance or significant interference. While the Landlord evidence of swearing and pushing is disturbing if true, this evidence is indirect and uncorroborated in the face of the Tenant's persuasive denial of such behavior. While I accept that there would be some noise from the Tenant's use of an air gun, there is no evidence to support any level of noise and the Tenant's description of the indoor use does not indicate a high level of noise. While I find the Tenant's act in

taking a video of the interior of the adjoining tenant's unit to be problematic, this was a one-time occurrence.

Given that the Landlord provided no documentary evidence to the Tenant to support the reasons for the Notice I accept the Tenant's evidence that the Landlord never said anything to the Tenant about any disturbances. This tends to detract from the Landlord's evidence of significant or unreasonable behavior by the Tenant and supports the Tenant's position that the Notice was given to the Tenant because of the Tenant's complaints. Ending a tenancy is a serious matter and not a step that should be taken lightly and without a required level of substantiation. For the above reasons I find that the Landlord has not provided sufficient evidence to substantiate on a balance of probabilities that the Tenant significantly interfered with or unreasonably disturbed anyone. As a result I find that the Notice is not valid and that the Tenant is entitled to its cancellation.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. It is undisputed that the Tenants were without an operational washing machine for a period of time. Given the Tenant's text evidence I find that the Tenant has substantiated a loss of use of the washing machine for three to four weeks. As I do not consider searching online as a valid reason for such a delay in obtaining a replacement machine I find that the Tenant has substantiated that the Landlord was negligent in providing the Tenant with a washing machine as required by the tenancy agreement. Accepting that the Tenants' health reasonably required the sending out of the laundry I find that the Tenant is entitled to compensation claimed of **\$113.59**.

As the Tenant's application has been successful I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$213.59**. The Tenant may deduct this amount from future rent payable in full satisfaction of the entitlement.

Conclusion

The Notice is cancelled and of no effect. I grant the Tenant an order under Section 67 of the Act for the amount of **\$213.59**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: March 18, 2016

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Residential Tenancy Branch