



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC CNC MNDC FF O

### Introduction

This hearing convened pursuant to applications by the tenants and the landlord. The tenants applied to cancel a notice to end tenancy for cause dated January 16, 2017. The landlord applied for an order of possession pursuant to the notice to end tenancy, as well as for monetary compensation. One tenant and the landlord participated in the teleconference hearing.

### Preliminary Issues

This tenancy has been the subject of previous dispute resolution hearings. In a decision dated December 24, 2016, the arbitrator cancelled a notice to end tenancy for cause that the landlord served on the tenants on October 15, 2016. The arbitrator found that the landlord had failed to provide sufficient evidence to show that there was cause to evict the tenants. In a decision dated February 8, 2017, the arbitrator dismissed the tenants' claim for monetary compensation for loss of quiet enjoyment.

In the matter before me, I informed the parties that I would only be considering incidents occurring after October 15, 2016, as evidence of potential cause to uphold the January 16, 2017 notice to end tenancy. I informed the landlord that although her previous notice to end tenancy was cancelled because of insufficient evidence of cause, this did not give her the opportunity to have a second hearing on those issues forming alleged cause in the October 15, 2016 notice.

I also informed the parties that I determined that the issue of the January 2017 notice to end tenancy took precedence, and only heard evidence on that issue. I will address the remainder of the landlord's application in the conclusion of my decision.

Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Is the notice to end tenancy for cause dated January 16, 2017 valid?

### Background and Evidence

The tenancy began on February 1, 2016. The rental unit is a condominium in a multi-dwelling strata property. The unit directly above the tenants' rental unit is not owned by the landlord in this matter.

On January 16, 2017, the landlord served the tenants with a notice to end tenancy for cause. The notice indicated that the reasons for ending the tenancy were that the tenants had (1) significantly interfered with or unreasonably disturbed another occupant or the landlord; and (2) seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord stated that the tenants have been harassing her with excessive emails. The landlord stated that between July and October 3, 2016 the tenants sent the landlord 164 emails, mostly to complain about noise caused by the occupants in the unit above them. The landlord also submitted evidence showing that the tenants sent her a further 13 emails between October 16 and October 20, 2016. The landlord stated that she told the tenants to send their complaints to the strata directly, but they kept emailing her. The landlord stated that the tenants then harassed the strata and the rental manager with more emails, as well as harassing other occupants of the strata by taking videos and pictures of them, including a child.

The landlord stated that the tenants twice prevented her from carrying out an inspection in the rental unit. The landlord stated that on December 5, 2016 she gave the tenants written notice that she would be inspecting the unit on December 9, 2016. The landlord stated that when she arrived to do the inspection she knocked on the door but no one answered, and when she tried to unlock the door, her key would not work.

The landlord stated that when she again attempted to do an inspection on December 22, 2016, she was not able to complete the inspection because the tenant was taking a video of her, following her very closely, and she got nervous and had to stop.

The tenant responded that between December 15, 2016 and January 16, 2017 they only sent three emails to the strata, when excessive noise started again upstairs. The tenant stated that the noise complaints are legitimate. The tenant denied ever personally insulting other strata occupants.

The tenant stated that the notice for the December 9, 2016 inspection was invalid because it did not have a time on it. The tenant acknowledged that she uses a “gizmo” to keep her door locked because she has mobility issues and does not want someone to come in during the day.

The tenant stated that on December 22, 2016, when the landlord came to do her inspection, she was intimidating and condescending to the tenant. The tenant stated that as a result of the stress the landlord was causing her, she had difficulty breathing. The tenant stated that the landlord’s inspection was not interrupted, she inspected everything.

### Analysis

I find that the notice to end tenancy for cause dated January 16, 2016 is not valid.

I find that the tenants did not significantly interfere with or unreasonably disturb the landlord between October 15, 2016 and January 16, 2017. The evidence shows that the tenants stopped emailing the landlord with complaints by October 20, 2016. Therefore the tenants’ emails to the landlord had stopped nearly three months before the notice to end tenancy at issue was served, and I find that this cannot form cause for ending the tenancy.

I find that the tenants did not significantly interfere with or unreasonably disturb other occupants, as the strata management do not constitute “occupants.” I also find, in this case, that the residents of the unit above the tenants’ rental unit are not “occupants,” as they are not tenants of the landlord; they are merely neighbours. The strata, not the landlord, is responsible for addressing issues between the condo owners, by way of enforcing the strata rules and, if they deem it necessary, by issuing fines.

I find that the tenant did not seriously jeopardize the landlord’s lawful right to carry out an inspection. As the first notice of entry was flawed, in that it did not include a time for the inspection, it was open to the tenant to disregard that notice. As to the December 22, 2016 inspection, I am not satisfied that the tenant’s actions on that date caused the landlord to cut her inspection short.

As the landlord's application for an order of possession was not successful, the landlord is not entitled to recovery of the filing fee for the cost of her application.

As the tenants' application to cancel the notice to end tenancy was successful, they are entitled to recovery of their \$100.00 filing fee.

### Conclusion

The notice to end tenancy for cause dated January 16, 2017 is cancelled, with the effect that the tenancy continues until such time as it ends in accordance with the Act.

The landlord's monetary claim is dismissed with leave to reapply.

The tenants are entitled to recovery of their \$100.00 filing fee, which they may deduct from their next month's rent.

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 20, 2017

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Residential Tenancy Branch

