



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on February 10, 2023, seeking an order to cancel the One Month Notice to End Tenancy for Cause (the “One Month Notice”) and a reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 16, 2023. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

Both parties attended the hearing. At the outset, each confirmed they received the prepared documentary evidence prepared by the other. On this basis, the hearing proceeded.

### Issue(s) to be Decided

Is the Tenant entitled to an order to cancel the One Month Notice?

If the Tenant is unsuccessful in their Application, is the Landlord entitled to an Order of Possession pursuant to s. 55 of the *Act*?

Is the Tenant entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

### Background and Evidence

The Tenant provided a copy of the tenancy agreement in their evidence. This tenancy started on April 1, 2022. The Landlord and Tenant both agreed it is a very basic tenancy agreement.

With the Landlord verifying the details, the Tenant described their rental unit as one of three that are in the rental unit property. They reside in one of the downstairs units, along with another resident. Two residents live upstairs. The Tenant and Landlord both referred to the rental unit property as a newer-constructed home.

The Tenant provided a copy of the One-Month Notice. This shows the Landlord signed the document on February 2, 2023. The indication on page 2 is that the Landlord served it by emailing it to the Tenant at a pre-agreed email address for service.

On page 2 of the document, the Landlord provided the reasons for giving the notice:

- Tenant or a person permitted on the property by the Tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The Landlord enclosed 4 pages with the One-Month Notice to the Tenant. This contains details from each of the upstairs residents, as well as the other downstairs resident. These are incidents and/or accounts of noise emanating from the Tenant's rental unit, from January 10 through to February 2, 2023. In general, the other residents described overhearing the Tenant's own conversations with their guests and/or on the phone, their own playing of music, TV and games.

In their evidence, the Landlord included their communication with the other residents focusing on the Tenant's behaviour and noise level. These date from January and February 2023.

The Landlord also included their correspondence to the Tenant of February 2, 2023, attaching the One-Month Notice. The Landlord cited their need "to provide a safe and livable space to the tenants." The Tenant responded to say that they occasionally have guests over, and they normally stay up often much past 11pm. The Tenant perceived that the upstairs residents "slam on the floor" instead of just messaging to the Tenant.

The Tenant also mentions the “paper thin” walls in the house, meaning they also can hear everything that goes on in that house.

In the Tenant’s own evidence, they provided their letters of apology to the other residents at the rental unit property. They mentioned a medical condition, meaning they were in a crisis. They mentioned playing their musical instruments since that time “to a minimum” to account for the lack of soundproofing in the house. They also returned their electric drum set.

In a separate letter to the Landlord, the Tenant mentioned their medical conditions; by mid-February they had treatments for these conditions in place. They also pledged to the Landlord to proactively eliminate the possibility of these issues [*i.e.*, disturbances to the other residents] occurring again.”

In the hearing, the Tenant disclosed that in the January – February timeframe they were in medical distress with their mental health. This involved insomnia, often for several days. They described visits to the hospital that were ineffectual. They remained in the hospital from late February to early April and continue to take medication. They stated in the hearing that they did not discuss this condition with the other residents in great detail. A letter from the Tenant’s social work case manager attests to the difficulty the Tenant had in accessing health care in January, and “under these circumstances [the Tenant’s] anxiety may have impacted, for short periods of time, [their] ability to respond appropriately in social situations.”

The Tenant stressed that they have been keeping “low-profile” since returning to the rental unit in April. This means low volume and going to bed very early. They plan to set up a time with the upstairs residents as an appropriate timeframe for them to play their music.

In the hearing, the Landlord set out that they had to address the complaints from the other residents. The Tenant moved in April 2022, and from that time to January 2023 there were no complaints. The Landlord knows that from January 2023 to February 2023 things “went out of control”.

The Landlord acknowledged they have not received complaints about the Tenant since February. The Landlord expressed their apprehension about future possibilities of the Tenant having some health issues.

### Analysis

The *Act* s. 47(1) sets out subsection (d)(i) which the Landlord indicated on the One-Month Notice.

In this matter, the onus is on the Landlord to provide they have cause to end the tenancy. The Landlord spoke to the reasons in oral testimony; however, I find there is not sufficient evidence to show the One Month Notice is valid.

Here, I find the Landlord's evidence shows interference with another occupant. These are the other home property residents who also rent from the Landlord. This was ongoing for a relatively short period of time, and the Landlord acknowledged that in the hearing. I find the Tenant was aware of the situation, and became aware of the impact their behaviour was having on others. Most importantly, they were aware of the severity of this behaviour in that it could potentially end the tenancy.

The Tenant made the effort to apologize to the other residents at the rental property. This is acknowledgement from the Tenant that their actions were disturbing others. Given the Tenant's statements in the hearing, I find this was more than a token gesture on their part. The Tenant also listed other changes in their lifestyle to commit to adapting to the relatively close living quarters they are sharing with others.

These measures by the Tenant do not in and of themselves cancel the One-Month Notice; however, I also consider that the Tenant was there for a reasonable length of time before complaints started coming, and then complaints ceased after the Tenant got the health assistance they needed. While the behaviour was impactful, I find it was short-lived, and I accept the Tenant's statements that they are committing to keeping things calmer in their life going forward.

I cancel the One-Month Notice issued by the Landlord in January 2023. The tenancy shall continue.

I acknowledge the Landlord's apprehension and need for keeping things peaceful at the rental unit property. The Landlord has every right to issue another One-Month Notice should the behaviour continue or resume.

As the Tenant was successful in this application, I find the Tenant is entitled to recover the \$100.00 filing fee paid for this application. I authorize the Tenant to withhold the amount of \$100.00 from one future rent payment.

### Conclusion

For the reasons above, I order the One-Month Notice issued on February 25, 2021 is cancelled and the tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: May 16, 2023

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Residential Tenancy Branch