



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION AND REASONS

### Dispute Codes

CNC & FF

### Introduction

This hearing dealt with the tenants' application to dispute a one month Notice to End Tenancy for cause. Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

### Issue to be Determined

Is the landlord entitled to an Order of Possession based on the tenants unreasonably or significantly disturbing the quiet enjoyment of other occupants?

### Background and Evidence

This tenancy began on April 1, 2008 for a fixed term tenancy which ended effective March 31, 2009. The tenancy has then continued on a month to month basis. The monthly rent is \$1,050.00 and the tenants paid a security deposit of \$525.00 on March 10, 2008.

On April 17, 2009 the landlord served the tenants with a one month Notice to End Tenancy for cause on the basis that the tenants were significantly disturbing the other occupants or the landlord.

The landlord stated that the disturbances by the tenants began almost immediately when a first warning was issued. Subsequently, since the tenancy began the tenants have been issued four fines by the Strata. Interestingly, it appears that the Strata issued fines without any significant investigation of the alleged complaints. This was one of the tenants' main arguments against the claims being made by the landlord.

The tenants gave an example where a fine was levied due to alleged noise from tires squealing in the parking lot. The tenants asked how it was determined that this was related to them or their guest and also pointed out that the steep driveway makes it likely that any driver could squeal their tires. Another complaint was alleged as a result of their guests making too much noise in the parking lot while waiting for cabs, but again no evidence was presented that it was the tenants' guests who were making the noise.

The other issue raised by the tenants was the fact that the only written complaints appear to be received from one other unit. The tenants' argued that these occupants are the only one's complaining and the only people that they have had any difficulties with. The tenants argued that these occupants have complained since they moved in and their tolerance for noise is not reasonable.

The landlord acknowledged that the complaints come from one occupant but suggested that the other neighbours were not complaining because they have a hearing problem. The landlord also insinuated that other occupants would not come forward with complaints because they were intimidated by the tenants. There was no evidence presented; however, to give any credence to this speculation.

### Analysis and Findings

In any high occupancy style living, such as a strata building or apartment building, each occupant has the right to enjoy their living premises but that use and enjoyment must be tempered with the responsibility to not unreasonably disturb the other occupants of the building.

Section 47 of the *Act* states in part:

**47 (1)** A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b) the tenant is repeatedly late paying rent;
- (c) there are an unreasonable number of occupants in a rental unit;
- (d) the tenant or a person permitted on the residential property by the tenant has
  - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - (iii) put the landlord's property at significant risk;

The issue before me is to determine whether the tenant has unreasonably disturbed or significantly interfered with quiet enjoyment of another occupant. Landlord and tenant common law provides the covenant of quiet enjoyment which provides:

*At common law, the covenant of quiet enjoyment "promis(es) that the tenant . . . shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy." A landlord does not have a reciprocal right to quiet enjoyment.*

It is commonly accepted that unreasonable and ongoing noise is a breach of the covenant of quiet enjoyment.

The landlord relies on the complaints received from one other occupant and on the evidence that the tenants have been fined four times by the Strata based on alleged breaches of the Strata Bylaws.

I have considered whether the fact that the tenants have been fined by the Strata should be given any evidentiary weight in determining if the tenants have unreasonably disturbed another occupant or the landlord. I find that they do not. It was determined during the hearing that the fines were levied based on complaints received; however, the agent for the Strata confirmed that the complaints were not investigated to ascertain if they had any validity. I am persuaded by the tenants' argument that they have received complaints and a fine due to people making noise in the parking lot but with no investigation to confirm it was the tenants' guests.

I have also considered the complaint letters submitted by the other occupant. I note that the first complaint originated within days of the tenants moving into the rental unit. While there appears to have been many letters written, the landlord provided copies of the complaint letters written on April 4, 2008, October 27, 2008, March 23, 2009 and April 6, 2009.

The noise complaints appear to be generated whenever the tenants have guests over and with noise generated inside the rental unit when the tenants are talking. The occupants claim that one of the tenants' talking keeps them awake all night. The letters indicate that noise occurs until the early morning hours; however, there was no evidence to confirm this was actually the case.

The tenants submitted that they have significantly changed their lifestyles to accommodate the upstairs neighbours. I accept their evidence that they do not make noise beyond 10:00 p.m. to 11:00 p.m. I find that the complaints of one other occupant are not sufficient to end this tenancy. I am not persuaded that the landlord, or Strata, has sufficiently investigated the complaints and find that if the noise from these tenants was unreasonable there would be other occupants complaining.

While I do not doubt that the complaining occupants believe they are being disturbed, I am not satisfied that this is due to unreasonable noise from the tenants. It is a characteristic of living in condo or apartments to deal with the noise generated from each occupant using their premise. It is only when that use is unreasonable that it can cause a tenancy to end.

### Conclusion

I grant the tenants' application and I set aside the one month Notice to End Tenancy. This tenancy will continue with full force and effect. The tenants may recover the \$50.00 filling fee paid for this application by deducting it from the next month's rent.

Dated June 09, 2009.

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Dispute Resolution Officer