



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      CNC, FF, O

### Introduction

This matter dealt with an application by the tenants to cancel a Notice to End Tenancy for cause and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were hand delivered to the landlord on September 13, 2010.

Both parties appeared and the tenants had representation from their advocate. The Parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

Are the tenants entitled to cancel the One Month Notice to End Tenancy?

### Background and Evidence

Both Parties agree that this tenancy started on April 01, 2003. This started as a fixed term tenancy and reverted to a month to month tenancy at the end of the fixed term. Rent for the unit is \$945.00 per month and is due on the 1<sup>st</sup> of each month. The tenants paid a security deposit of \$425.00 on April 01, 2003.

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The landlord testifies that the tenants were served a One Month Notice to End Tenancy for cause on September 09, 2010. The reason given on this notice is that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord. The landlords' agent states they have had numerous complaints about noise from the tenants unit over a period of time from 2005. The landlord states that four other tenants have given notice to end their tenancies due to noise from this tenants unit and another tenant was relocated. Some complaints were made verbally, some were phoned into the answering service and some have been put in writing to the landlord. In 2005 the landlords' agent states there were two verbal complaints and a written complaint from a tenant in suite 211 which is directly below the tenants suite. This tenant vacated his unit in March 2006. In 2006 a written complaint was received from a tenant in suite 310 which is adjacent to the tenant's suite. This tenant vacated in November, 2006. In 2007 a written complaint was received by the landlord from a tenant in suite 312 which is also adjacent to the tenant's suite. This tenant moved out in March 2007. Another tenant moved into this suite on June 01, 2009 and made a verbal complaint to the landlords about noise from the tenants he followed this up with an e-mail and letter and moved from his suite in November, 2009. Another tenant moved into suite 211 in May, 2010 and a written complaint was received from her in September, 2010. This tenant was relocated to a new suite in October, 2010.

The landlord states the tenants were notified of the noise issues coming from their suite by letter on October 20, 2005 and November 28, 2006. A discussion took place between the landlord and tenant concerning the complaint in 2009 and a final Notice was sent to the tenant on November 26, 2009 for repeated excessive noise complaints. This was followed by a One Month Notice after another complaint was received in September, 2010.

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The landlord states the female tenant has provide a diary of noise issues; however, some of the dates the tenant has recorded showing noise from suite 211 was over a period when there was no tenant residing in that suite. The landlord states they take action whenever they get a compliant and send the offending tenant a letter.

The landlord seeks an Order of Possession for October 30, 2010 but is willing to extend this to November 30, 2010 if there are no more incidents of excessive noise from the tenant's suite.

The tenants dispute the landlords' claims. The tenant's advocate cross examines the landlords agent and asks if the tenant who was residing in 211 was informed about previous complaints. The landlord replies "management did not inform her but other tenants did". The landlord was asked if the tenant who was residing in suite 312 was given a reduced penalty from the landlords for ending his tenancy early if he put his compliant in writing. The tenants advocate refers to this tenants e-mail to the landlord which states he did get a reduced penalty when he moved. The landlords' agent states "he did not get a reduction in his penalty". The landlord is asked if the new tenant in suite 312 has made any complaints about the tenants. The landlord replies "not yet".

The tenants advocate asks the landlord if she has a resident manager in the building who can respond to noise complaints and identify which unit the noise comes from. The landlord replies "not at this time, the last resident manager moved out in March, 2009 and since that time they only have an offsite manager".

The advocate asks the landlord is it is easy to identify which suite noise comes from. The landlord replies "it is not easy, the resident complaining will go and check a suite and this is then confirmed with neighbours. If a tenant calls the police then the police go to check otherwise the offsite manager checks the next day by talking to the

neighbours. In 2010 the tenant in suite 211 directly below the tenant's suite went to their unit to complain about the noise".

The tenant states they had an issue with the tenant in suite 312. The tenants state they have had to approach this tenant about noise from his stereo. He moved this to another wall in his unit. The tenant states that at that time he asked him if he had any problems with noise from his unit and was told just with a door slamming. The tenant states the door stuck and had to be slammed closed. He asked the landlord to repair it and in the end he got someone to do the repairs himself. They continued to have problems with the tenant in suite 312. Whenever this tenant had people over the music was turned up and his guests would shout over it. At that time the tenant states he called the Police who came and told that tenant to turn his music down. Another incident occurred with that tenant when he had people over again. The tenant states he was followed into the hall after making a complaint and was threatened. The tenant states he had to call the police again.

The tenant's feel they are being evicted for other tenants noise. The female tenant states she only practises her music in the day time for a few hours and they go to bed early. The tenant states she started to keep a diary of noise within the building to show that you cannot always tell where the noise is coming from unless you are in the hallway. The tenant states there was one occasion when she was out of town and the male tenant called her. It was a hot evening and the windows were open. She states during the phone call someone was banging on the door to their unit saying he was talking too loud so they ended their call. On another occasion she states they were talking between two rooms when a person knocked on the door and asked them to stop shouting and on a third occasion a person knocked on their door asking her to stop singing and yelling. The tenant states on each occasion they responded and went to bed to satisfy the tenant who was knocking.

The tenant states they are offended by accusations that they stand on their balcony and shout racial slurs at 02.00 am as they would not do something like that and are never up that late.

The tenants advocate states only one tenant has made a complaint in 2010, the tenant in 312 was the noisy tenant and they suggest he was given a reduction in his penalty in exchange for a complaint letter. The tenants advocate states the tenants have been very quiet for 10 months as they are fearful of being evicted.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. The landlord has provided letters and transcripts of service calls from neighboring tenants concerning the noise coming from the tenant's suite. The landlord has also provided copies of the Notices sent to the tenants about the excessive noise from their suite. While I accept that there has only been one complaint in 2010 made to the landlord, there were other incidents of noise which were dealt with directly by the tenant making the complaint. I also accept that there appears to be no recent incidents or complaints from the tenant's new neighbors'.

However the landlords have lost tenants because of the noise from these tenants suite and the noise has continued up to the time they were served the Notice to End Tenancy despite warning letters about their excessive noise. Consequently I find the documentary evidence from the landlord shows it is likely that the tenants have



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unreasonable disturbed other occupants of the building over and above normal sounds of everyday living to the extent that four other tenants have vacated their suites and one tenant has asked to be relocated. Therefore, I find the reason given on the One Month Notice to End Tenancy is valid and the landlord is entitled to an Order of Possession.

## Conclusion

The tenant's application is dismissed. The One Month Notice to End Tenancy for Cause will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on November 30, 2010. This order must be served on the tenants and may be filed in the Supreme 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: October 20, 2010.

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Dispute Resolution Officer