



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issues to be Decided

Is the tenant entitled to any of the above under the Act.

### Summary of Background and Evidence

This tenancy started in February 1, 2002 and the tenant's current rent is \$913.00, the tenant paid a security deposit of \$500.00. On November 6, 2010 the landlord served the tenant with a Notice to End Tenancy for Cause: the tenant has allowed an unreasonable number of occupants in the unit/site; significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; put the landlord's property at significant risk; damaged the landlord's property; adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; jeopardized a lawful right or interest of another occupant or the landlord.

The landlord's agent testified that during the past 3 months the actions of the tenant made living unbearable for the tenants on the main floor. This situation has led to the tenants on the main floor abandoning their lease and ending their tenancy early.

The landlord's agent stated that the tenant's loud music at all hours, blocking the parking space, running water at 2AM, leaving the front door open for guests and having guests coming and going have all contributed to the reasons noted on the notice to end the tenancy for cause. The landlord's agent stated the tenants on the main floor repeatedly made efforts to contact the tenant and discuss the issues but that the tenant made no effort to be available to talk to the tenants and resolve any issues.

There is minimal evidence at best noting as to when the loud music or people coming and going took place, just that on Thursday and Friday nights the tenant typically has guests come over which in its self is not an issue. There is an issue with the front door

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potentially being left unlocked for guests and this concern is easily remedied. The previous tenants could also hear the tenant up and walking around in her apartment very late at night which they found disruptive.

The landlord's agent stated that he was recently having new tenants interviewed for the main floor unit and has had difficulty finding new renters. It must be noted however that the tenants on the main floor that were moving out were the parties conducting the interviews for the landlord's agent and advising the prospective tenants of any issues within the building.

The landlord's agent stated that while the tenant has lived in the upstairs unit for 6 years and *"most of the time the tenant has been quiet and kept to herself"*, the landlord's agent now feels that the tenant will cause problems for the new main floor tenants. The landlord's agent also stated that it is very difficult to contact the tenant when issues regarding the tenancy come up.

The landlord's agent is also concerned about a loss of revenue for the month of December however the landlord stated that the tenants that occupied the main floor and broke their lease have paid December's rent.

The landlord's agent stated that the vacating tenants had a visit at work from the tenants that occupied this unit prior to them and they felt that the applicant had put them at risk as they believe the applicant told the prior tenants where they worked; this however is not an issue that falls under the Act.

The tenant testified that she has been a resident of the building for 8 years in total and has occupied the top suite for the past 6 years. The tenant stated that she has never had problems or complaints about her before from tenants in the building. As the tenant did live in the main floor suite at one time, the tenant was very familiar with the noise transference from the top unit to the main floor unit.

The tenant stated that she did sometimes leave the front door unlocked if she was in the middle of cooking and her guests were on their way over as her doorbell does not work. The tenant stated that when her guests did arrive she would immediately go down and lock the front door. Ensuring that the doorbell is fixed is a simple remedy to this issue.

The tenant did admit that on 2 occasions she parked directly on the property; once on the lawn where she had seen the landlord park and once at the front of the driveway in front of the other tenant's car. The tenant stated that she parked here as it was very late at night and there was no street parking within 2 blocks. The tenant however made sure to set her alarm so that she was up in time to move her vehicle and not cause any inconvenience to the other residents.

The tenant stated she does sometimes take showers very late at night or have her music on low when she gets home as the tenant works until 2AM and this is only reasonable.

The tenant is very open to creating better lines of communication and working out any issues not only with the landlord but the new tenants that occupy the main floor unit and this is imperative for the tenancy to succeed.

## Analysis

Based on the documentary evidence and testimony of the parties I find that there is insufficient evidence to uphold the Notice to End Tenancy for Cause.

There will always be noise transference from an upper unit to a lower unit and our individual sensitivity to noise will determine what level of noise we each consider tolerable. And while the most recent tenants that occupied the main floor of the property had issues with noise from the upstairs tenant, I must consider that this tenant has occupied the top floor unit for 6 years with no prior noise complaints. In this hearing the tenant has agreed to be available and open to communication with the landlord, landlord's agent and the tenants that eventually occupy the main floor and this is an absolute necessity for this tenancy to remain successful.

The matter of the front door being left unlocked is easily remedied by the landlord repairing the tenant's doorbell however until such time as it is repaired the tenant is to not leave the front door unlocked without being in attendance so that neither the property or other occupants are put at risk.

It has not been established that the tenant has an unreasonable number of occupants coming to her suite and a tenant having on a Thursday or Friday night is not unreasonable.

It is also not unreasonable to believe that someone that works until 2AM will want to run the water and shower when they get home or listen to music however care can be taken by the tenant to avoid any undue noise that may disturb the main floor tenants.

Accordingly, the notice to end tenancy is hereby set aside and the tenancy continues in full force and effect.

The tenant is entitled to recovery of the \$50.00 filing fee.



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## Conclusion

I therefore allow the tenant's application and set aside the landlord's Notice to End Tenancy for Cause dated November 6, 2010 with the result that the tenancy continues uninterrupted.

The tenant may deduct \$50.00 from future rent owed to the landlord for recover of the filing fee paid to bring their application.

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: December 1, 2010

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Dispute Resolution Officer