



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

### Issue to be Decided

Should the notice to end tenancy be set aside?

### Background and Evidence

The parties agreed that on or about November 25 the landlord served on the tenant a one month notice to end tenancy for cause (the "Notice"). The Notice alleged that the tenant has significantly interfered with or unreasonably disturbed another occupant.

The landlord testified that he has received a number of complaints from M.K. who lives immediately beside the rental unit as well as complaints from the tenant on the other side of the rental unit, who did not wish to participate in the hearing. M.K. testified that 2-3 times each week she is awakened in the night by the sound of the tenant walking in the unit, opening doors loudly, playing music, talking and arguing. M.K. stated that the tenant frequently arrives home late and stays up throughout the night, making noise. M.K. stated that she frequently hears the tenant arguing loudly with her boyfriend or with people on the telephone. According to M.K., up until recently, the tenant smoked on her balcony and the smell of the smoke would drift into neighbouring units. M.K. testified that on November 22 she was awakened shortly after 2:00 a.m. by the sound of screaming, swearing and banging on the wall. M.K. could hear things smashing and the noise continued for 20 – 25 minutes. M.K. telephoned the police and stayed on the telephone with the 911 dispatcher while awaiting the arrival of the police. The landlord

entered into evidence a record of the complaint which shows that M.K. phoned 911 at 2:24 and that “banging” continued until the police arrived at 2:31.

The landlord testified that A.K., the tenant who previously lived in M.K.’s unit, ended her tenancy in the building because of the excessive noise. A.K. wrote a letter which was submitted into evidence in which she stated that “One of the main reasons [for vacating] was the constant loud noise coming from my next door neighbour in apartment #403 in the middle of the night. I was woken up at least 3 days a week between 3am to 6am from yelling, fighting and loud noises. Each time I was awoken, the noises would continued [sic] for at least 30 additional minutes (sometimes much longer).”

The tenant testified that she has received a verbal and a written warning from the landlord regarding noise and that since receiving those warnings, she has considerably reduced the noise she produces. The tenant denied having a stereo and stated that while she occasionally plays her television, it is so low she can barely hear it. The tenant stated that she is at all times considerate of her neighbours and makes very little noise. Addressing the events of November 22, the tenant stated that she arrived home at approximately 2:00 a.m. and while on the telephone accidentally dropped a bowl which shattered and then knocked over a closet door which had come off its hinges. The tenant stated that these were the only noises made on that morning.

### Analysis

The landlord bears the burden of proving that the tenant has caused an unreasonable disturbance to other occupants. Although the tenant strongly denies having disturbed her neighbours, I find it unlikely that M.K. and A.K. would both complain about the same types of noises if those noises were not occurring. Further, I do not accept the tenant’s account of the incident occurring on the morning of November 22. The tenant stated that she broke a bowl and caused a door to drop, but those two events would have lasted for just a moment. It is clear from the record of the 911 call that the noise lasted at the very least from the time the call was placed at 2:24 until 2:31 and I find it very

likely that there was considerable noise prior to 2:24 as there would have been no reason for M.K. to summon the police had there been no noise.

I find that the disturbance caused by the tenant has been ongoing and unreasonable and I find that the landlord has proven grounds to end the tenancy. I therefore dismiss the tenant's application for an order setting aside the Notice.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

### Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession effective January 31, 2011.

Dated: December 30, 2010

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