



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

CNC, SS, O

### Introduction

This hearing dealt with the tenant's application to cancel a Notice to End Tenancy for Cause. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

The tenant has applied for authorization to serve documents in a different way than required by the Act. I determined the tenant had served the hearing documents in a manner that complies with the Act and it was not necessary to further consider this request.

### Issue(s) to be Decided

Should the Notice to End Tenancy for Cause be upheld or cancelled?

### Background and Evidence

I was provided the following undisputed evidence from the parties. The tenancy commenced in January 2010 and the tenant is required to pay rent of \$600.00 on the 1<sup>st</sup> day of every month. The building is an older, wood frame building and the rental unit has laminate floors in the living areas and carpet in the bedroom. The landlord also explained that hard floors installed more recently have had a soundproofing layer installed under the flooring; however, some of the flooring installed in the past may not have had soundproofing installed.

It is also undisputed that on May 30, 2011 the tenant received two warning notices that were posted on her door for complaints related to May 20, 2011 and May 28, 2011. On May 31, 2011 the landlord posted a 1 Month Notice to End Tenancy for Cause (the Notice) on the tenant's door. The Notice has a stated effective date of June 30, 2011 and indicates the reasons for ending the tenancy are:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant has caused damage to the unit or property [modified by the landlord to exclude the word extraordinary]; and,
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord made the following submissions and the tenant provided the following responses with respect to events that occurred on May 20, 2011, May 28, 2011 and May 31, 2011.

### **May 20, 2011**

The landlord received a complaint from the persons living below the tenant that there was such loud banging above them that their light fixture cover fell off. Two other tenants complained of loud music and sounds of partying coming from the rental unit. The landlord prepared a warning notice on May 27, 2011 and posted it on the tenant's door May 30, 2011. The landlord explained that he waited several days to issue the warning letter because he was busy renovating another unit and moving.

The tenant submitted that she was out watching a movie and returned to the unit with her boyfriend after midnight. She and her boyfriend made something to eat and then went to bed. Nobody was in her unit when she was out. The tenant provided written statements signed by the tenant's mother and two friends attesting to the tenant spending the evening with them at the movie and driving friends home.

### **May 28, 2011**

The landlord received a phone call from the persons living below the tenant at approximately 11:30 p.m. to complain that there was loud banging on their ceiling again. The landlord went to the rental unit to speak with the tenant but the landlord did not hear any loud noises. The landlord called the complainants who advised the landlord the noises had just stopped. The tenant answered the door and had a gaming control in her hand. The landlord talked to the tenant and suggested she get rubber mats for the floor.

The tenant submitted that she was at home that evening babysitting her younger brother. They were watching movies and playing video games. The tenant was also doing dishes. The tenant acknowledged her brother may walk heavily. The tenant does not feel it is her responsibility to purchase rubber mats. The tenant has moved her

television into the bedroom, which has carpeting, in an effort to minimize noise transference.

### **May 31, 2011**

In the late morning, the person living below the tenant complained to the landlord that there was loud banging on the ceiling again and described how their calendar fell off the wall. The landlord proceeded to prepare the Notice to End Tenancy to serve upon the tenant.

The tenant was unsure as to what exactly she was doing on the morning of May 31, 2011 but submitted it was likely she was either doing housework or perhaps moving furniture around. Usually, the tenant is out during the day because she goes to school. Nobody else is in her unit when she is out.

I also heard from the landlord that the unit below the tenant's unit was vacant before April 9, 2011, the date the new occupants moved in. The tenant acknowledged the unit below hers has been vacant but that at other times it has been occupied and there were no complaints lodged against her before.

Documentary evidence considered in making this decision are copies of the written submissions, the two warning notices posted on May 30, 2011 and the Notice to End Tenancy posted May 31, 2011. The warning notices prepared in June 2011 were not considered as those notices were not served upon the tenant except as evidence for this hearing and because the Notice to End Tenancy had already been issued.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. The Notice issued to the tenant has three reasons; however, I have only considered one of the reasons in detail as I have found the landlord had insufficient grounds to indicate the other two reasons.

I have found the landlord did not have a basis to indicate the tenancy should end for breach of a material term and causing damage on the Notice to End Tenancy for the following reasons.

In order to end the tenancy for causing damage, the Act requires that the landlord show the tenant caused extraordinary damage. In modifying the Notice to End Tenancy to exclude the word "extraordinary" I find the landlord was not of the position the tenant

caused extraordinary damage. Therefore, the broken light cover is not a basis to end the tenancy, even if it fell because of actions of the tenant, because it is not extraordinary damage.

In order to end the tenancy for breach of a material term, the landlord has to show that the tenant was given written notice of a breach of a material term and a reasonable amount of time to correct the breach. I find that posting warning notices on May 30, 2011 and the issuance of the Notice the next day does not meet the landlord's requirement to give the tenant a reasonable amount of time for corrective action.

With respect to the allegation the tenant has significantly interfered with or unreasonably disturbed other occupants I find the landlord has not proven, on the balance of probabilities, that the tenant's actions warrant an end to this tenancy upon consideration of the following:

- The landlord asserted complaints were received from three different units about noise and partying on May 20, 2011 yet the warning notice indicates that the landlord received "a complaint" which is indicative of receiving a complaint from only one unit. Therefore, I find insufficient evidence to support the landlord's allegations that multiple units complained.
- The landlord did not hear any loud sounds when he approached the unit on May 28, 2011.
- The flooring in the living areas is hard surface flooring and it is reasonably likely there is a lack of soundproofing under the flooring.

In light of the above, I grant the tenant's request to cancel the Notice to End Tenancy with the effect that this tenancy continues.

### Conclusion

The Notice to End Tenancy has been cancelled and the tenancy continues.

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: June 28, 2011.

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Residential Tenancy Branch