



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated August 10, 2011.

### Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

### Background and Evidence

This one year fixed term tenancy started on June 27, 2011. On August 10, 2011, the Landlord's agent served the Tenant with a One Month Notice to End Tenancy for Cause dated August 10, 2011 by posting it to the rental unit door. The grounds alleged on the Notice were as follows:

- The Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- The Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The Landlord's agent, G.M., claimed that a few days after the Tenant moved in, the Assistant Manager received complaints from some other tenants of the rental property about loud music, loud voices and fighting. Consequently, G.M. said the Assistant Manager asked the Tenant to keep down the noise which she did. G.M. also said she had a telephone conversation with the Tenant the following day and the Tenant promised not to disturb other tenants again.

G.M. said she continued to receive complaints from other tenants of the rental property approximately every 2 – 3 days (especially the occupant of #217) about loud music, shouting, the smell of marijuana coming from the rental unit and the Tenant's cat entering another suite. G.M. provided a list of dates that she said she received these complaints. G.M. said she posted 2 written warnings on the Tenant's door on June 30, 2011 and July 15, 2011. G.M. claimed that as a result of the Tenant's actions, the occupants of 3 neighbouring suites moved out. Consequently, G.M. said on August 10, 2011 she served the Tenant with a One Month Notice to End Tenancy for Cause.

The Landlord's witness (M.G.) is an assistant building manager who resides in the rental property with her spouse. M.G. corroborated G.M.'s evidence that early in the tenancy she received complaints from several other tenants of the rental property about loud music coming from the rental unit. M.G. said she could also feel vibrations from the music in her suite that day so she went to the rental unit and asked the Tenant to turn her music down which she did. M.G. said her spouse also went to the rental unit on a couple of occasions due to noise complaints and he advised her that the police had also attended on a couple of occasions due to threats made to the Tenant's boyfriend (but she could not be sure). M.G. said she was advised by the tenant in suite #211 that he had given his notice to end his tenancy because of the Tenant's noise. M.G. said she also believed 2 other tenants moved out because of the noise coming from the rental unit based on what G.M. had told her.

The Tenant admitted that the assistant manager asked her on one occasion early in the tenancy to turn down her music but she denied that there were any other occasions. The Tenant claimed that she was never again approached by the assistant manager and denied receiving any written warnings from the Landlord. The Tenant argued that the only tenant complaining about her was the occupant of #217, who she claimed was mentally ill, left her television blaring all day and never left her suite. The Tenant said she believed this person called the police for no reason although she admitted that on one occasion she screamed when she cut her finger and the police came because they believed she had been assaulted. The Tenant denied that the smell of marijuana was coming from her suite and said her neighbour complains about cigarette smoke even though she is permitted to smoke on her balcony. The Tenant also said her neighbour complains about her cat coming into her suite although she is permitted to have pets and her neighbour leaves her balcony door open.

The Tenant also claimed that the tenant of suite #211 advised her the day she moved in that he had given his notice to end his tenancy because he was angry with the Landlord. The Tenant said she received letters from 2 other tenants of the rental property, who found her helpful and friendly and did not disrupt them. The Tenant said she believes one of these tenants resides on the same floor near her suite.

### Analysis

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 claimed that she received many complaints from other tenants that they were being unreasonably disturbed by loud music, shouting and fighting, the smell of marijuana and the Tenant's cat entering their suite. The Tenant admitted that she

received one verbal warning about noise but denied receiving any other verbal or written warnings from the Landlord.

G.M. relied on her notes regarding times when she claimed that she received complaints about the Tenant. However, with the exception of the tenant of suite #217, the Landlord's notes identify the alleged complainants generally as "the assistant manager and tenants." The Landlord argued that the tenants who complained were identified on the written warnings given to the Tenant however the Tenant denied ever receiving a written warning from the Landlord. The assistant manager, M.G., had no personal knowledge of the other alleged complaints as she claimed it was her spouse who would have dealt with them. M.G.'s spouse did not attend the hearing to give evidence and did not provide a written statement.

G.M. also claimed that 3 tenants in neighbouring suites moved out because of the Tenant's disturbances however none of these people gave written statements or attended the hearing to give evidence. The assistant building manager, M.G., also claimed that the tenant of #211 told her he was moving out because of the Tenant's noise disturbances however the Tenant claimed that the occupant of #211 told her on the first day of her tenancy that he had already given his notice to end his tenancy.

Finally, the Landlord relied on the written statements of the tenant of suite #217 about details and dates when she was allegedly disturbed by the Tenant. The Tenant argued that this person had a mental illness and she could not explain why she kept complaining about the Tenant. This person did not attend the hearing to give evidence or to be cross-examined on her statement and as a result, I give her written statements little weight.

In summary, I find that the Landlord has provided little reliable, corroborating evidence to support her allegation that she received complaints about the Tenant from various tenants of the rental property who ended their tenancies as a result of the Tenant. In the absence of any witness statements or other evidence from these alleged complainants, I conclude that there probably was only one repeated complainant, the occupant of suite #217. Although this occupant provided a written statements outlining things that disturbed her, in the absence of any oral evidence from her, her statement is merely hearsay and unreliable. For all of these reasons, I find that there is insufficient evidence to find that the Tenant has significantly interfered with or unreasonably disturbed another occupant of the rental property or the Landlord. I also find that there is no evidence that the Tenant has committed an illegal act. Consequently, the One Month Notice to End Tenancy for Cause dated August 10, 2011 is cancelled and the tenancy will continue.

As a final note, the Tenant said during the hearing it was her belief that her cat could roam freely about the rental property because pets were permitted and that if her neighbour was unhappy about the cat entering her suite, she could shut her door or move. However, I find that the Tenant is mistaken in this regard. Simply because pets

are permitted in a rental unit does not mean that they may disturb other tenants in common areas and especially in their own suites. Consequently, the Tenant now has written notice that if her pets continue to disturb other tenants by entering into their suites when she knows they are not welcome there, it may constitute grounds for eviction.

The Tenant also said it was her belief that the Landlord could not evict her until she had been given 3 written warnings. However, the Tenant is also mistaken about this. In most cases, fairness will require that a tenant be given **a** warning (preferably in writing) that their conduct is unacceptable and if it continues it could result in their tenancy ending so that a tenant has an opportunity to remedy the situation. There will be some cases, however where a single incident may be so significant that it will constitute grounds to end a tenancy and therefore it will be unnecessary for a landlord to give a tenant any warnings.

### Conclusion

The Tenant's application is granted. The One Month Notice to End Tenancy for Cause dated August 10, 2011 is cancelled. 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: September 22, 2011.

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Residential Tenancy Branch