



# 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 March 23, 2012.

### Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?

### Background and Evidence

This fixed term tenancy started on February 1, 2012 and expires on January 31, 2012. On March 28, 2012, the Landlords served the Tenant with a One Month Notice to End Tenancy for Cause dated March 23, 2012 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;
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.”

The Landlords’ agent said on or about February 16, 2012, the Strata for the rental property received complaints about excessive noise coming from the rental unit. A Notice of the alleged by-law violation was sent by the Strata to the owners of the rental unit together with a letter dated February 24, 2012. The letter advised the owners that they could respond to the alleged violation or request a hearing with the Strata within 21 days if they disputed the allegations. The Landlords’ agent said a copy of the Infraction Notice and letter dated February 24, 2012 were served on the Tenant on March 7, 2012. The Landlords claim that the Tenant did not respond to the by-law violation notice and did not request a hearing. The Tenant’s advocate claimed that the Tenant received the letter dated February 24, 2012 on March 17, 2012 and sent an e-mail requesting a hearing not only to the person identified on the letter but also to the property managers. The Tenant’s advocate claimed that the Tenant did not receive a response to her request.

The Landlords' agent said in response to another noise complaint (regarding a loud argument) from the occupant of the neighbouring suite that was alleged to have taken place on March 5, 2012, he served the Tenant in person (with a witness present) on March 7, 2012 with a letter warning her that if there were any further noise complaints that he would issue a One Month Notice to End Tenancy. The Tenant's advocate denied that the Tenant received this letter.

The Landlords' agent said on March 8, 2012, the Strata for the rental property received another noise complaint from the Tenant's neighbour about loud music coming from the rental unit. On March 22, 2012, Strata issued a letter to the owners of the rental unit advising them of the by-law contravention. The letter also advised the owners that they could respond or request a hearing within 21 days. The Landlords' agent said he served a copy of this letter on the Tenant on March 28, 2012 (together with a copy of the One Month Notice) by leaving a copy of it posted to the rental unit door. The Tenant's advocate claimed that the Tenant received this letter on April 1, 2012. The Tenant's advocate also claimed that the Tenant sent e-mails to the property managers and to the Strata representative identified in the letter to request a hearing but got no response. The Landlords' agent claimed that neither he nor the Strata received the alleged e-mails from the Tenant.

The Landlords' agent also claimed that after he delivered his letter to the Tenant on March 7, 2012, the Tenant left a hand-written note on the neighbour's door in which she claimed she was not responsible for the alleged noise and that she would be attending a meeting in which the neighbour was also required to attend because she had made the complaints.

The Tenant's advocate argued that the Tenant was not responsible for the noise violations and that the Strata letters did not disclose who had made the complaints however she admitted that the Tenant was advised by the Landlords that it was her neighbour. The Tenant's advocate also argued that the Tenant did not have an opportunity to respond to the complaints. The Tenant's advocate further argued that the Landlord was required to give the Tenant three warnings before they could evict her.

### Analysis

In this matter, the Landlords have 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 Landlords' evidence is contradicted by the Tenant, the Landlords will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I find that the Tenant was served with two Strata violation notices as well as one from the Landlords related to noise complaints; the first two were delivered on or about March 7, 2012 and the third on or about March 28, 2012. There is little evidence about

the nature of the alleged noise violations from the Strata given that the written complaints in support of them were not submitted as evidence. The only evidence of these complaints is a summary on the Strata violation letters of the date, time and general nature of the complaint. Although the Tenant's advocate claimed that the Tenant's e-mail requests to dispute these violations were ignored by the Strata and property managers, she provided no evidence of the e-mails in question. Furthermore, while it is considered a principle of fairness that a Landlord provide a tenant with reasonable warning that their conduct may result in eviction if it is not corrected, there is no rule that a Landlord must give a tenant 3 warnings as the Tenant's advocate argued.

However, I find that it is not sufficient for the Landlords to rely on Strata by-law violation notices or the Tenant's failure to respond to them as evidence that she caused a "significant interference or unreasonable disturbance." While this evidence might be sufficient on its own to warrant eviction for failure to comply with a material term of the tenancy agreement, that was not a ground selected by the Landlords on the One Month Notice. Consequently, I find that there is insufficient evidence to make out this ground of the Notice.

The Landlords also claimed that the Tenant's letter of March 7, 2012 that she posted on her neighbour's door was threatening and thereby jeopardized the safety of another occupant of the rental property. While it was inappropriate for the Tenant to advise her neighbour that she was required to attend a meeting with her because she had made complaints, I find that there is no evidence to support the allegation that this placed the Tenant's neighbour's safety in "serious jeopardy." Consequently, I find that there is insufficient evidence to make out this ground of the Notice.

### Conclusion

The Tenant's application is granted. The One Month Notice to End Tenancy for Cause dated March 23, 2012 is cancelled and the tenancy will continue. 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: April 24, 2012.

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Residential Tenancy Branch