



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNC, FF

### **Introduction**

This Hearing dealt with the Tenant's application cancel a *One Month Notice to End Tenancy for Cause* issued March 14, 2012 (the Notice) and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

I have considered all testimony and documentary evidence that met the requirements of the rules of procedure. However, I have referred only to the evidence that was relevant to the Tenant's application in this Decision.

### **Issue to be Decided**

- Should the Notice be cancelled?
- Is the Tenant entitled to recover the cost of the filing fee from the Landlord?

### **Background and Evidence**

The Landlord's agent gave the following affirmed testimony:

- The Landlord inherited the tenancy in December, 2011. The Landlord's agent is the resident manager and was also resident manager for the previous landlord.
- The Tenant has had some violations in the past with respect to noise and feeding birds, but they were minor in nature.
- After six to eight complaints from other occupants about the Tenant being noisy and about the smell of marijuana coming from the rental unit, the Landlord's agent wrote a warning letter to the Tenant on November 8, 2011. A copy of that letter was provided in evidence.

- Despite the written warning letter, the noise level has escalated in the last few months. The Notice was issued on March 14, 2012 and posted to the Tenant's door on the same day.

The Tenant and his counsel gave the following affirmed testimony and submissions:

- The Tenant has lived in the rental unit since May, 2010. He has had only one written warning regarding noise since he moved in which is the letter dated November 8, 2012. The warning referred to his playing the guitar and the TV being too loud. Recently, the Tenant purchased a new TV and installed in on the wall. As soon as he got the notice, he moved the speakers away from the wall and he does not play his guitar anymore.
- The Tenant believes the Landlord is trying to get rid of him because he smokes marijuana. The Tenant has a license to use marijuana for medicinal purposes.
- The Tenant provided a hand written list containing the signatures of other occupants in the building who state that the Tenant is a good neighbour.
- The Tenant wishes to work with the Landlord to maintain a good relationship with his neighbours. The Tenant has stopped smoking marijuana inside his home since he got the Notice and will use headphones for his TV after 9:00 at night.

The Landlord's agent gave the following reply:

- She is not concerned about marijuana smoking as long as it does not affect the rights of the other occupants to peaceful enjoyment of their homes.
- One of the neighbours who signed the letter supporting the Tenant has since asked to have his name removed. He only signed it because the Tenant falsely said that he had been given a second chance by the management.
- Another female occupant has been harassed by the Tenant to sign the letter of support.

The Tenant provided the following reply:

- The Tenant was not harassing the female occupant. She had lead him to believe that she was sorry that he was being evicted and even went to speak to the management, he believed on his behalf. She told him that she supported him and so he asked for her signature. He did not consider it harassment.

**Analysis**

In an Application such as this, the onus is on the Landlord to prove, on the balance of probabilities, that the tenancy should end for the reasons provided on the Notice.

The Notice gives the following causes for ending the tenancy:

1. The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord; and
2. 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 Tenant provided no documentary proof that he is licensed to smoke marijuana for medical purposes, however the Landlord did not provide sufficient evidence that the Tenant's use of marijuana was affecting the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord. The November 8<sup>th</sup> warning letter makes no reference to marijuana smoke and the Landlord did not provide any oral or written testimony with respect to how it may be affecting other occupants in the rental property. Therefore I find that the Landlord has not provided sufficient evidence that the tenancy should end for the second reason provided on the Notice.

The Landlord provided the Tenant a written warning in November, 2011, about his noise. The Tenant testified that he was attempting to address the issue. No further warning letters were given to the Tenant before he received the Notice some four months later. The Tenant provided signatures of 5 occupants who live next door to the Tenant and who indicate that the Tenant is a good neighbour. One of the people who provided his signature asked to have it removed, supposedly because he signed the letter of support on the understanding that the Tenant was getting a second chance. This statement was troubling because I could not see the logic in providing a signature of support if the Tenant was still causing disturbance, whether or not the Tenant was getting a second chance.

I find that the Landlord provided insufficient evidence that 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 Landlord provided the Tenant with a written warning on November 8, 2011, about noise levels, but provided no further concrete details (for example specific dates, times, names of complainants) about other incidents that may have occurred after November 8, 2011 and before issuing the Notice to End Tenancy on March 14, 2012. I do not find sufficient cause to end the tenancy at this time, however the Tenant is warned that a landlord has a duty to provide all occupants in the rental property quiet enjoyment and that any future undue disturbance could be cause to end the tenancy.

I order that the Tenant bear the cost of filing his application.

**Conclusion**

The Tenants' application is granted. The Notice to End Tenancy issued March 18, 2012, is cancelled and the tenancy will continue until it is ended in accordance with the provisions of the Act.

I order that the Tenant bear the cost of filing his 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: April 10, 2012.

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Residential Tenancy Branch