



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for cause and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord company attended the conference call hearing and the landlord also had an observer who did not testify during these proceedings. Both parties provided evidentiary material prior to the commencement of the hearing, and both parties gave affirmed testimony. One of the evidence packages provided by the tenant was not provided within the time required by the *Residential Tenancy Act* and Rules of Procedure, and the landlord did not agree nor oppose the inclusion of that evidence. I see no prejudice to the landlord in considering that evidence, and all evidence and testimony provided has been reviewed and is considered in this Decision.

No other issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

Is the tenant's application to cancel a notice to end tenancy for cause justified in the circumstances?

### Background and Evidence

The landlord testified that this month-to-month tenancy began on August 1, 2009 and the tenant still resides in the rental unit. Rent in the amount of \$500.00 per month is payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. On July 22, 2009 the landlord collected a security deposit from the tenant in the amount of \$250.00 which is still held in trust by the landlord. The rental unit is a bachelor suite in a 2 story building on the main floor.

The landlord further testified that there have been several incidents since the beginning of the tenancy with respect to the tenant's television being loud, yelling, and threatening behaviour that has caused the landlord to lose 3 other tenants. The landlord provided copies of letters written by those tenants, but does not recall the dates that they vacated their respective rental units.

The landlord also provided a copy of the tenancy agreement for this hearing and pointed out paragraph 17, which states:

"17. Conduct. In order to promote the safety, welfare, enjoyment and comfort of other occupants and tenants for the residential property and the landlord, the tenant or the tenant's guest must not disturb, harass, or annoy another occupant of the residential property, the landlord or a neighbour. In addition, noise or behaviour, which in the reasonable opinion of the landlord may disturb the comfort of any occupant of the residential property or other person, must not be made by the tenant or the tenant's guest, nor must any noise be repeated or persisted after a request to discontinue such noise or behaviour has been made by the landlord. The tenant or the tenant's guest must not cause or allow loud conversation or noise to disturb the quiet enjoyment of another occupant of the residential property or other person at any time, and in particular between the hours of 10:; p.m. and 9:00 a.m.

"If any tenant or tenant's guest causes another tenant to vacate his rental unit because of such noise or other disturbance, harassment, or annoyance or because of illegal activity by the tenant or tenant's guest, the tenant must indemnify and save harmless the landlord for all costs, losses, damages, or expenses caused thereby. The landlord may end the tenancy pursuant to the Act as one of his remedies."

The landlord testified that paragraph 17 is a material term of the tenancy agreement.

On January 17, 2010 the landlord sent a letter to the tenant referencing paragraph 17 of the tenancy agreement, and testified that the landlord had received noise complaints regarding the television being too loud and disturbing other tenants at late hours.

On January 26, 2010 the landlord received an email from another tenant complaining about the tenant leaving the television on at all times of the night, loud enough to prompt the writer to lose sleep. The email states that the writer has spoken to the tenant during the day and other times has knocked on the tenant's door, but recent attempts to knock have gone unanswered.

The landlord has provided copies of other emails and letters. Putting them in a chronological sequence of events, the first is an email dated September 30, 2010 wherein another tenant complained to the landlord about the tenant. The email states that the tenants had spoken and the tenant advised he would lower the volume on the television after 9:00 p.m. but has never done so. When the writer of the email thumped on the floor as a signal for the tenant to lower the television, the reaction was a louder television and obscenities being yelled at the writer. The landlord testified that the writer moved out of the rental unit as a result of the disturbances.

On September 30, 2010 the landlord issued a warning letter to the tenant, which references Section 17 of the tenancy agreement, and advises that should any further incidents occur, a Notice to End Tenancy would be issued.

The landlord has provided a copy of a string of emails between an employee of the landlord and another tenant stating that the tenant's music is very loud and has escalated. The first in the string is an email from another tenant dated January 7, 2011 stating that the tenant directly below has been blaring the television until 12:00 or 2:00 a.m. on the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> of January, being loud piano music on the television and commercials, and some sort of African language music concert until 2:00 a.m. The last of the string of emails is dated January 22, 2011 and states that the noise was twice as loud as the night before.

The landlord also provided another email from that tenant dated February 21, 2011 which also lists a log of dates and times that the tenant's television is on, including drum music, voices from the television, music, weird noises and weird howling noises. Attached to that email is a request from the landlord's employee to describe the problems that tenant has experienced, as well as another email dated February 17, 2011 stating that the tenant is still blaring the television all hours of the night.

The landlord also provided a copy of a letter from the landlord to the tenant dated February 24, 2011 which references paragraph 17 of the tenancy agreement and states that if the tenant's noise level of the television not be lowered immediately upon receipt of the letter, a notice to end tenancy would be issued.

Another letter in the landlord's evidence package is an email from another tenant dated October 31, 2012 and describes loud television and radio on a Sunday till about 1:30 a.m. and the following Monday until 3:30 a.m. The letter describes the tenant as being inebriated.

Another letter in the landlord's evidence package is an email dated October 19, 2012, again by a tenant complaining about the radio and television being too loud, and that it keeps happening.

Another email dated July 4, 2012 has been provided by the landlord. It states that there has been a continuous problem since moving in as a result of the television or radio being on so loudly that the writer usually hears it over the writer's television, and describes a situation where the writer was woken around 2:00 a.m. and kept up past 3:00 a.m. The person states that the tenants had spoken and the tenant asked that the writer knock on the door if the noise is too loud, but the tenant is either passed out or it's so loud that the knocks are not heard.

The next letter in the landlord's evidence package is a warning letter to the tenant from the landlord dated July 11, 2012, which speaks to paragraph 17 of the tenancy agreement and advises the tenant that further noise complaints had been received and that if the situation did not improve immediately, the landlord would be issuing a Notice to End Tenancy.

Another letter in the landlord's evidence package is an email dated November 1, 2012 attaching a letter containing the same date. The letter describes 2 incidents that both took place on November 1, 2012. The writer is also a tenant in the building, and the letter states that the police were called after the writer heard threats and obscenities from the tenant. The police gave the writer a file number and advised that the situation had been resolved, but it was not the first occurrence of being woken up or kept awake by loud radio and television.

The landlord issued a 1 Month Notice to End Tenancy for Cause on November 2, 2012 and served it on November 2, 2012 by registered mail. A copy of the notice was provided for this hearing, and it is dated November 2, 2012 and contains an expected date of vacancy of December 2, 2012. The landlord testified that the *Act* states that the incorrect effective date ought to be changed automatically to December 31, 2012. The reasons for issuing the notice are: Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, 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 also testified that the building is made of cinder block between the rental units. As such, sound does not travel between units, or between kitty-corner units, and no complaints from units beside or kitty-corner to this rental unit have been made. The complaints were all from rental units above.

The tenant testified that the complaint letter of January 26, 2010 is not disputed, but the tenant did not realize at that time how noise travels and how sound-proof the building is. However, the tenant disagrees with the complaint letter of September 30, 2010. The tenant explained that each time a new tenant moves into that rental unit, there are complaints, but the incident described in that letter was about a football game on television that the tenant and a guest had watched.

The tenant also testified that the first tenant that the landlord described moved out because of the tenant's actions, actually moved out because he was transferred, not as a result of noise complaints. The tenant stated that blame is being placed on the wrong rental unit. Noise travels.

The tenant further testified that some of the complaints described by the landlord include African music, piano music and guitar. The tenant does not listen to African music or piano music, and stated that the tenant who did was a teacher in the rental unit next door to this rental unit.

The tenant further testified that one of the incidents described by the landlord was another tenant. After hearing the verbal abuse, the tenant told the other tenant that it was not called for and then went to apologize for that tenant's actions. The tenant did not answer the door, so the tenant saw her the next day or so and apologized. The tenant who uttered the verbal abuse was evicted about a year ago.

The tenant has also provided letters from other tenants, and one in Unit #6 at another address states that the writer has never heard excessive noise from the tenant's rental unit nor has the writer witnessed any disturbances during a year and a half of being neighbours.

Another tenant has provided a character letter on behalf of the tenant, and that letter states that the tenants have been neighbours for several years, and no loud music or television sounds have been heard during visits or while passing by the rental unit. The letter also states that day to day sounds of occupants in other suites are present.

The tenant's position is that sound travels, and the landlord is mistaken about which rental unit the noises are coming from.

### Analysis

I have read the letters and other materials provided by both parties. Although I accept that noise travels, and perhaps not all of the complaints were deserving by this tenant, I do accept the landlord's testimony and letters from other tenants stating that this tenant has been spoken to, has been written letters by the landlord, and has continued to cause disturbances. The tenant did not provide any testimony regarding conversations with the landlord's agents about the warning letters issued, or whether or not the tenant attempted to explain to the landlord's agents at the time they were issued that the disturbances were not from the tenant's rental unit.

I also note that some of the letters and emails sent to the landlord by other tenants indicate that the tenant has alcohol problems, and that the tenant did not answer knocks on the door, leaving the tenants to believe that the tenant had passed out leaving the television or radio on too loudly.

In the circumstances, I find that the landlord had cause to issue the notice to end tenancy.

I have reviewed the notice to end tenancy, and I find that it is in the approved form, and I agree with the landlord that the effective date of vacancy ought to read December 31, 2012 and pursuant to the *Residential Tenancy Act*, the effective date of the notice is changed to that date.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

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: December 17, 2012.

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Residential Tenancy Branch