



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Mt. Tolmie Holdings Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy. The hearing was conducted via teleconference and was attended by three of the tenants; two agents for the landlord and their witness.

Prior to the hearing the landlord requested, in their written submission, an order of possession should the tenants be unsuccessful in their Application. During the hearing, the landlord verbally requested an order of possession.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

If the tenants are unsuccessful in their Application seeking to cancel the 1 Month Notice to End Tenancy it must be decided if the landlord is entitled to an order of possession, pursuant to Section 55 of the *Act*.

### Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on July 31, 2012 for a 1 year fixed term tenancy beginning on August 1, 2012 for the monthly rent of \$1,500.00 due on the 1<sup>st</sup> of each month with a security deposit of \$750.00 paid. The tenancy agreement includes terms under the title "Other" as follows: "Hardwood floors to be covered by area rugs and felt pad protectors under furniture" and "No parties and/or loud noise after 10 p.m."

I note that the tenancy agreement lists 4 tenants, however, only two of the listed tenants actually reside in the rental unit. The other 2 tenants are the mothers of the two that reside in the unit.

The landlord submitted into evidence a timetable of events that shows the occupant from the rental unit below started complaining to the landlord regarding disturbances from the tenants as early as August 30, 2012, specifically related to noise and doing laundry after 10:00 p.m. The landlord submits they met with the tenants to discuss the tenancy and any issues and remind them to lay area rugs.

The timetable shows that the lower unit occupant continued to complain about noise issues through October 2013 and a caution notice was provided to the tenants on October 16, 2013 that identified the possibility that the tenancy could end if the tenants continue to disturb the other occupant.

The landlord submits the lower occupant complained about specific disturbances in each of the months following – December 2012; January, February, and March 2013. The landlord provided into evidence a 1 Month Notice to End Tenancy for Cause was issued on March 26, 2013. The landlord submits the Notice was served personally to one of the tenants at 9:45 p.m. on March 27, 2013 and that this service was witnessed by a third party. The tenants confirmed that one of the tenants did receive the notice as described by the landlord.

The tenants submit that they have done nothing wrong and that the noises the occupant below was complaining about were just ordinary everyday living noises. The reasons the occupant below heard these noises and was disturbed are twofold. Firstly, there is no soundproofing between the two rental units and sounds transfer between the two rental units through the heating duct system. The tenants testified that they could hear the occupant below them on many occasions while engaged in activities with her boyfriend.

Secondly, the occupant below has a different work and life schedule than the tenants. The tenants occupying this rental unit are students and have jobs in the hospitality industry. These tenants get home late at night or early morning (one at around 11:00 p.m. and the other around 2:30 a.m.) and the occupant below has a more traditional daily schedule.

The landlord's witness testified that there have been many occasions late at night and in the early morning hours when she has been awoken by the noise of people walking around upstairs with heavy steps and dog noises. She also states that on a couple of occasions she has heard yelling at 2:30 to 3:30 in the morning.

The male landlord's agent testified that on two occasions in particular he had to attend the rental unit after receiving complaints from the occupant below. On January 20, 2013 the occupant below complained that there was excessive noise after 10:00 p.m. from a group of people and a dog. He states he attempted to call the tenants but they would not answer their phone. He called the tenant's mother to ask her to contact the tenant. The tenant testified that they had some people over and were playing a game and that they did not mean to disturb anyone.

On February 2, 2013 between 10:00 and 11:00 p.m. the male landlord's agent received calls from the occupant below reporting that there was loud music and voices in the upper rental unit. He attended the rental unit and heard the music himself; knocked on the door and no one answered; he called the tenant's mother and shortly after he returned to the unit and the rental unit was quiet.

The tenant acknowledged that they had had people over and that it was not until she went into the bedroom and saw she had a call from her mother that the music was turned down. The tenants submit the landlord and the tenant below colluded against the tenants in an effort to end this tenancy and that if the rental unit was properly soundproofed there would be no issue at all.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

While I accept that the occupants of the two separate rental units do have very different schedules, the tenants in the upper unit signed a tenancy agreement agreeing specifically to not have parties and/or any loud noise after 10:00 p.m. and as such, I find the tenants were bound to this condition.

I also accept that some of the noises heard by the occupant of the lower unit *may* have been "regular daily living noises". However, the landlord had provided the tenants with a written warning, in October 2013, advising them that they had contravened their obligations under the tenancy agreement and that further disturbances may result in ending the tenancy.

I find that since the tenants believed that there was inadequate soundproofing and had received a warning from the landlord of their noise violations they had an obligation to take additional care to ensure they were not disturbing other occupants after 10:00 p.m.

Instead, I find the tenants failed to take their contractual obligations or the landlord's warnings seriously. In fact, the tenant felt that even though she was having friends over to play a game and that she had no intention of disturbing the other tenant, she still does not accept that her actions caused any kind of disturbance at all. She feels the noises she and her roommate made were just regular life noises.

As the tenants did not dispute the male landlord's agent's testimony that on two other occasions (January 20, 2013 and February 2, 2013) the tenants did unreasonably disturb the occupant of the rental unit below them, I find the landlord has established that the tenants failed to comply with the terms of the tenancy agreement in regard to no parties and loud noise after 10:00 p.m.

As to the tenants' claim that the occupant below and the landlord colluded and conspired against the tenants I find the tenants have provided no evidence to substantiate this assertion. Further, I note that when a landlord receives a complaint from one tenant that other tenants are causing disturbances the landlord is obligated under Section 28 of the *Act* to investigate such complaints and take appropriate action to ensure the complaint is resolved.

I find in the case before me that the landlords investigated thoroughly; witnessed some of the disturbances themselves; provided the tenants with more than adequate warning to correct the behaviour that was causing the disturbances; and the tenants failed to correct the behaviour.

For these reasons I find the landlord has established sufficient cause to end the tenancy.

Section 55(1) of the *Act* states if a tenant makes an Application for Dispute Resolution to dispute a landlord's notice to end tenancy, the director must grant an order of possession to the landlord if, the landlord makes an oral request for an order of possession and the director dismisses the tenant's Application or upholds the landlord's notice. As noted above the landlord did request an order of possession during the hearing.

### Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

As the tenants were unsuccessful in their Application I dismiss their claim to recover the filing fee for the cost of this 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: May 02, 2013

