



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OPC, MNDC, LAT, FF

### Introduction

This hearing was convened in response to applications filed by both the tenant and the landlord.

The tenant seeks:

1. To cancel a Notice to End Tenancy given for cause;
2. A monetary order for compensation for damage and/or loss in the sum of \$25,000.00;
3. An Order allowing the tenant to change the locks on the rental unit; and
4. Recovery of the filing fee paid for this application.

The landlord seeks:

1. An Order of Possession; and
2. Recovery of the filing fee paid for this application.

Both parties appeared at the hearing and gave evidence under oath.

### Issue(s) to be Decided

Is either party entitled to the Orders sought?

### Background and Evidence

This tenancy began in July 2012. The tenant testified that he vacated the rental unit on May 24, 2012.

The tenant says his claim for \$25,000.00 is for harassment, persecution, intimidation and loss of quiet enjoyment. The tenant testified the landlord attempted to evict him in order to have his suite available for company travelling from abroad for a family wedding. The tenant testified that he successfully disputed the Notice to End Tenancy issued in this regard on April 22, 2013. Even so, the tenant says the landlord and his son continued to harass him and ask him to move so relatives could use his suite. The tenant says the landlord was intimidating him and became abusive and threatening. The tenant says he has had to call the police to the home. The tenant says he has a police file number to prove that the matter has been reported to the police.

The tenant says that before he vacated the landlord's family and friends arrived at the home for the wedding and for a 6 or 8 week period he was unable to sleep because of the noise they made. The tenant says that the landlord and his company created excessive noise until 2 am by banging drums, singing and stomping on the floor above him. The tenant says the landlord's grandchildren were wrestling in the house and jumping up and down on the floor starting at 7:30 in the morning until 12:30 at night on weekends and 10:30 on week nights. The tenant says that the landlord served him with another Notice to End Tenancy for cause and threatened him that if he didn't move out at the end of the month that he would be thrown out. The tenant says that he eventually decided to vacate the rental unit because he became concerned that he might assault the landlord.

The landlord says the Notice to End Tenancy for cause was given because the tenant was repeatedly late paying his rent and because he is smoking in and around the rental unit even though smoking is not permitted. The landlord states that he has the Sikh holy book in his home and it is against his religion to have smoking in his home. Further that his wife and son have allergies and the smoke is affecting them. The landlord submits that he and his family have rarely spoken with the tenant except to advise him of an upcoming wedding and to say hello on a day-to-day basis. However, the landlord says they have become increasingly concerned about having him in their home because of his false accusations. For instance, the landlord says while the tenant says the police have attended the home, the police have never attended. In any event, the landlord says he is now satisfied that the tenant complied with the Notice to End Tenancy and that he vacated on May 24, 2013.

With respect to the tenant's claims about harassment, the landlord agrees that he did speak with the tenant in March 2013 about his son's upcoming wedding in May 2013. The landlord says that out of respect and concern for the tenant he wanted to let the tenant know that he would have approximately 15 guests staying in his home and approximately 50 additional guests coming over during the day for celebrations over the

course of a week. The landlord says his intention was to give the tenant an opportunity to find another place so he would not be inconvenienced during this time. The landlord says that there was another family wedding 10 years ago and they spoke with the tenants they had at that time and those tenants chose to move. The landlord submits he was only trying to give this tenant the opportunity to stay elsewhere or vacate. The landlord says he offered the tenant not to pay rent for May by way of compensation.

The landlord says he was very concerned about the guests coming for the wedding because the tenant had already been complaining about his grandchildren making noise. The landlord says that children do make noise but they are very young and it's not significant. The landlord says the tenant knew there were young children in the home and noise was to be expected. The landlord says his daughter has trouble getting the children to sleep at night because the tenant has his television so loud.

The landlord agrees his older grandson is taking lessons on a "dhol" instrument and he practices daily especially in preparation for the wedding. However the landlord says he never plays after 9 p.m. because he goes to bed so he can get up for school at 7:30 a.m. The landlord questions "As a homeowner, am I not allowed to practice an instrument in my own home?"

The landlord says he lost trust in the tenant because he has made false accusations about the police attending the home, that he has said the landlord had evicted previous tenants because of wedding plans which is simply not true and because he was repeatedly late paying his rent and smoking. The landlord says he and his family do not feel comfortable with this tenant.

### Analysis

The tenant has vacated the rental unit therefore his applications to cancel the Notice to End Tenancy given for cause and to be allowed to change the locks are dismissed as they are no longer necessary. Likewise the landlord's application for an Order of Possession is also dismissed.

With respect to the tenant's claim for \$25,000.00 for loss of quiet enjoyment the *Residential Tenancy Act* establishes rights to quiet enjoyment, which include, but are not limited to:

- reasonable privacy
- freedom from unreasonable disturbance,

- exclusive possession, subject to the landlord's right of entry under the Legislation, and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Every tenancy agreement contains an implied covenant of quiet enjoyment. A covenant for quiet enjoyment may be spelled out in the tenancy agreement; however, if no written provision exists, common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes.

Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy. These days interference might include serious examples of: • entering the rental premises frequently, or without notice or permission; unreasonable and ongoing noise; • persecution and intimidation; refusing the tenant access to parts of the rental premises; • preventing the tenant from having guests without cause; • intentionally removing or restricting services, or failing to pay bills so that services are cut off; • forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or, • allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

In this case the parties agree the wedding took place in May 2013 although the actual date of the start of the wedding celebrations was not revealed. The landlord's application is filed May 14, 2013 and he writes that he was then currently involved in planning a wedding to be held within the next "...couple of weeks..." The tenant's application is filed May 1, 2013 and while noise from wedding celebrations formed the largest part of his testimony in this hearing, he says little or nothing of wedding celebration noise in his written submissions. In fact the only noise he complains of in his written submission is of grandchildren wrestling and the sounds of drumming. Based on a balance of probabilities, I find that it is more likely than not that the real basis for the tenant's complaint of noise when he filed this application was the noise from the drumming and the grandchildren, not the wedding celebrations which took place after his claim had been commenced.

With respect to noise issues raised in the tenant's application, I find noise from grandchildren wrestling or of a grandson engaged in his drumming practice in a multi-

family building to be expected. I find that the tenant has failed to bring sufficient evidence to show me that these noises were of a sufficient duration or nature as to create for the tenant a loss of quiet enjoyment. Further, the landlord's testimony, which I do find to be reasonable, is that the grandson does not practice his drums after 9 pm because he goes to bed in order to rise for school at 7:30 a.m. I find that the tenant has failed to show that these noises were of a significant nature or duration to constitute a basis for compensation for a breach of the covenant of quiet enjoyment.

With respect to the tenant's claims of harassment, harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome". As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. There are a number of other definitions; however all reflect the element of ongoing or repeated activity by the harasser.

With respect to the tenant's complaint that he was harassed into vacating, although ill-conceived I accept that the landlord attempted to have the tenant leave the rental unit without proper grounds to do so. However, the tenant disputed that notice and the matter was resolved. When the landlord issued the second notice he did so for different reasons: repeated late payment of rent and smoking on the premises. While the tenant did dispute that notice he subsequently vacated as required. I do not find that the issuance of two notices to be a form of harassment. Likewise I do not find that simply because the landlord advised the tenant of an upcoming wedding during which there would be noise and frequent guests and for which the landlord offered the tenant compensation to constitute harassment. However, I do find the tenant's comment at this hearing that he was concerned he might assault the landlord telling. It is a revelation I find to be supportive of the unease expressed by the landlord about the tenant.

Overall I find the tenant has failed in his burden of showing that the landlord's actions were intimidating, threatening, abusive, vexatious and/or of an ongoing and repeated nature such that his conduct could be construed as harassment resulting in a loss of quiet enjoyment.

### Conclusion

The tenant's claims are dismissed. As the tenant initially disputed the landlord's Notice to End Tenancy and subsequently complied with the Notice after the landlord filed an Application seeking to enforce the Notice, I find that the landlord is entitled to recover

the \$50.00 he has had to pay for this application. The landlord is at liberty to deduct \$50.00 from the security deposit he holds on the tenant's behalf.

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 28, 2013

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Residential Tenancy Branch

