



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, OLC

### Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel the One Month Notice to End Tenancy for cause and for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served in person on November 02, 2013. The tenant provided a video recording showing the tenant serving the landlord with these documents.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the tenant entitled to have the Notice to End Tenancy cancelled?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?

### Background and Evidence

The tenant testifies that this tenancy started on September 15, 2013 for a fixed term tenancy which is due to expire on February 15, 2014. Rent for this unit is currently \$400.00 a month and is due on the 1<sup>st</sup> day of each month.

The tenant testifies that he has suffered with a loss of quiet enjoyment of his unit because of the high level of music being played by another tenant. The tenant testifies that he wrote to the landlord on October 01, 2013 about this noise to ask the landlord to do something about it. The music did stop for a few hours but started up again. The tenant wrote to the landlord again to complain on October 14, 2013 and then wrote again October 29, 2013 as the landlord had still not done anything about the music. In this letter the tenant asked the landlord what steps the tenant should take. The tenant has provided copies of these letters in his documentary evidence.

The tenant testifies that after the last letter was given to the landlord, the landlord became angry with the tenant and said if the tenant was not happy living there he should move out. The tenant testifies that at the start of his tenancy the landlord had asked the tenant to respect other tenants. The landlord is not however enforcing this rule with the other tenant who continually plays loud music.

The tenant testifies that the landlord then served the tenant with a One Month Notice to End Tenancy for cause on November 01, 2013. This Notice was posted to the tenants door and gave the following reasons to end the tenancy:

- 1) the tenant or a person permitted on the residential property by the tenant has
  - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - (iii) Put the landlord's property at significant risk;
- 2) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has
  - (ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property,or

(iii) Jeopardized a lawful right or interest of another occupant or the landlord

The tenant disputes all the reasons given on this Notice.

The tenant seeks an Order for the landlord to comply with the *Act* to protect the tenant's right to quiet enjoyment of his rental unit.

### Analysis

The landlord did not appear at the hearing to dispute the tenant's claims, despite having been given a Notice of the hearing; therefore, in the absence of the landlord, I have carefully considered the tenant documentary evidence and affirmed testimony before me.

When a landlord serves a One Month Notice to a tenant the burden of proof falls to the landlord to show that the reasons given on the notice are valid. I find that as the landlord has not appeared at the hearing, or given any evidence to support the reasons given on the One Month Notice, that I uphold the tenant's application to cancel the One Month Notice for cause.

The tenant has testified that the landlord has not protected the tenant's right to quiet enjoyment of his rental unit. I refer the parties to s.28 of the *Act* which states:

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

A landlord must protect each tenant's rights and must not stand idly by while others engage in such conduct that would disturb the tenants right to quiet enjoyment of his unit; as this may form a basis for a claim of a breach of the covenant of quiet enjoyment. I am satisfied from the undisputed testimony and evidence before me that the landlord has failed to protect the tenant's right to quiet enjoyment of his rental unit due to the loud music being played by the other tenant or occupant of the suite.

Consequently, I HEREBY ORDER THE LANDLORD to protect the tenant's right to quiet enjoyment ensuring the other tenant or occupant does not play loud music in a manner that disturbs this tenant. If the landlord fails to comply with this Order the tenant is at liberty to file a new application for monetary compensation from the landlord for a loss of quiet enjoyment of the rental unit.

#### Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated, October 31, 2013 is cancelled and the tenancy will continue.

I ORDER the landlord to protect the tenant's right to quiet enjoyment of his rental unit as set out above pursuant to s. 28 of the *Act*.

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: November 25, 2013

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Residential Tenancy Branch

