



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

The tenants apply to cancel a one month Notice to End Tenancy for cause dated September 21, 2013. The Notice claims that the tenants or a person permitted on the property by the tenants has “significantly interfered with or unreasonably disturbed another occupant or the tenant” and that the tenants have caused “extraordinary damage” to the unit or property. In the evidentiary material served by the landlords on the tenants October 28, 2013, the landlords included an “amended” Notice which also claimed that the tenants had “seriously jeopardized the health or safety or lawful right of another occupant or the landlord.”

At hearing, the landlord Ms. R. C. confirmed that the only ground she and her sister, the landlord Ms. W. relied upon was the unreasonable disturbance caused by the noise made by the tenants and their children, which was to the point of seriously jeopardizing Ms. R. C.’ health.

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show, on a balance of probabilities, that the tenants have caused or permitted such noise as to cause an unreasonable disturbance or to threaten the health of Ms. R. C.?

### Background and Evidence

The rental unit is the upper or main floor of a standard single family residential dwelling. The tenancy started in January 2013 on a month to month basis at a rent of \$1200.00. The landlord holds a \$600.00 security deposit.

From January until May the landlord Ms. R. C. lived in the house next door. Her co-landlord sister lives in another city. At the end of April Ms. R. C. moved into the basement suite below the tenants' rental unit. The suite had been vacant before that.

At hearing the landlord raised a variety of issues and complaints to which the tenants responded, including complaints about water damage to the ceiling of the lower suite and the outside deck. However, during the hearing, on at least two occasions, the landlord Ms. R. C. confirmed that her complaint and the reason for the Notice was the noise coming from the upper residence.

In support of her contention that the tenants are causing or permitting noise of a level to unreasonably disturb her in the basement suite, Ms. R. C. submitted a recording of approximately 40 minutes, taken on the modern day equivalent of a hand held "Dictaphone" placed on her kitchen table. The tenant Mr. K.C. claimed and the landlord appeared to agree, that the recording was composed of five or more different sections recorded at separate times.

The recording is rather extraordinary. In it one can plainly hear the shouts, cries and screams of children. The tenants have four; ages seven, five, four and two. The extraordinary part is that in addition one can clearly hear the tenants speaking at normal conversational levels, as though they were sitting at the very table supporting the recording device. While the entire forty minute recording was not played out at the hearing. Approximately fifteen minutes of it was and the clarity was consistent.

The evidence was inconsistent about how often the noise occurs, that is, when the children are home and what time they go to bed.

It is not disputed that the first formal notice the tenants had that noise was disturbing Ms. R. C. was when they were served with the Notice to End Tenancy. The landlord Ms. R. C. testified that once, at some unspecified time, she had spoken to the tenant Ms. K. C. about the noise but that the tenant "went ballistic."

### Analysis

There is no doubt but that the noise wafting down into Ms. R. C.'s suite is "disturbing." It is not only loud, but that particular sound of a child screaming is akin to fingernails on a chalkboard for many people.

However, for such noise to justify eviction it must not only disturb Ms. R. C. but "unreasonably disturb" her. Whether a disturbance is "unreasonable" or not will depend on the circumstances.

Similarly, if the tenants are not unreasonably disturbing the landlord with noise there is no ground to conclude the noise is seriously jeopardizing her health; the tenants are acting within their rights.

In the circumstances of this case I find that the noise evinced by the recording submitted by the landlord cannot be said to be "unreasonably" disturbing her.

First, the noise evinced by the recording is not beyond the noise one might expect from a young family of mother, father and four children all collected in a room or around a table. There is boisterousness, attention getting behaviour, quick anger, shouting and some screaming. There is the sound of the parents interacting in, for the most part, calm voices. The noise is perhaps more and louder than one might expect in the average home, yet less than one might anticipate in other homes. It is, nevertheless, the sound of family life.

Second, the landlords were aware they were renting to a family with four young children and the landlord Ms. R. C. was aware of that fact before she moved in. Indeed, she had been living next door.

Third, the parties are living in a home with apparently no soundproofing between the floors. Listening to the landlord Ms. R. C.'s recording one would swear the recorder was on the tenants' kitchen table, not the landlord's. In such a home the parties must expect and tolerate more noise disturbance than might otherwise be considered acceptable. It will take more for a noise to reach the level of "unreasonable."

Fourth, the tenants have had no formal warning that their family noise was significantly disturbing Ms. R. C.. In my view, and now that each side has had an opportunity to share their experience, it remains to be seen whether the children's behaviour can be adjusted to better accommodate her.

Conclusion

The tenants' application is allowed. The Notice to End Tenancy dated September 21, 2103 is hereby cancelled and set aside. There is no claim for recovery of a filing fee.

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 06, 2013

---

Residential Tenancy Branch

