



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties were given the opportunity to cross examine each other.

I find that the one month Notice to End Tenancy was sufficiently served on the Tenant by posting on April 21, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenants was personally served on the landlord on April 23, 2014.

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling the Notice to End Tenancy dated April 21, 2014?
- b. Whether the tenants are entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began on June 1, 2013 when the parties entered into a one year fixed term tenancy agreement in writing. The tenancy agreement provided that the tenant(s) would pay rent of \$1750 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$875 at the start of the tenancy. The rent was increased to \$1782 on June 1, 2014.

### Analysis

#### Grounds for Termination

The Notice to End Tenancy relies on section 47(1)(d) of the Residential Tenancy Act. That section provides as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(d) 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,

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

The basis of the Notice to End Tenancy is a number of noise complaints received by the landlord from other residents in the rental property. The landlord also raised a complaint of the tenant smoking and problems with the tenant's signage and operation of a business. Those were not part of the Notice and those issues were not considered as part of this hearing. The landlord has the right to serve a new Notice to End Tenancy based on those complaints.

The landlord relies on paragraph 31 of the tenancy agreement which provides as follows:

**31. CONDUCT.** In order to promote the convenience, safety, welfare and comfort of other Tenants in the building, the Tenants and their guests shall not disturb, harass, or annoy occupants of the building or neighbours, and shall not cause loud conversations, music, television, or other irritating noise to disturb peaceful enjoyment at any time and shall maintain quiet between 10:00 p.m. and 9:00 a.m. Any Tenant who causes other occupants to vacate the premises because of noise, or other disturbance, harassment, or annoyance, shall indemnify the Landlord for any reasonable costs and losses caused thereby, and may have the tenancy terminated on short notice pursuant to the Act.

The tenants have signed a Strata Property Act Form K – NOTICE OF TENANT'S RESPONSIBILITIES. The landlord did not provide a copy of the strata property bylaws.

Briefly the relevant evidence relied on the by landlord is as follows:

- The landlord testified that he has received a number of noise complaints from 3 different surrounding tenants that have lead to the following warning letters:
- July 24, 2013 warning letter pursuant to section 19 of the commercial lease
- November 2, 2013 warning letter advising the tenant the landlord had received complaints regarding music played at excessive and unreasonable volumes in the evening of Friday, November 1, that continued to 1:15 a.m. Saturday, November 2. The Notice was given pursuant to section 19 of their lease (presumably this is the commercial lease) and indicates it was the FIRST of THREE warnings.
- November 3, 2013 – the landlord gave a revised warning letter with regard to the conduct referred to above. This warning letter identifies that it is for Conduct under Addendum, section 31 of the tenants' residential tenancy lease and confirming it was the SECOND OF THREE warnings (the landlord discovered the July 24, 2013 on file).

- The landlord received an e-mail dated December 1, 2013 from a neighbor complaining about loud music on Friday night.
- The landlord received an e-mail from another tenant dated December 12, 2013 complaining about loud music.
- December 13, 2013 breach notice stating this was the final of three warnings relating to the noise complaints received for November 30, 2013 and December 11, 2013.
- On December 16, 2013 the tenants responded to the landlord's letter disputing the supposed noise of December 11, 2013 stating they did nothing on that date but watch television. They submitted it is an attempt by neighbors to force them out.
- The landlord received an e-mail dated January 5, 2014 the landlord received an e-mail from one of the neighbors stating "...I think their new strategy is to play music quite loud between 7:00 p.m. until 9:00 p.m. ... and then yes, they seem to shut it off or turn it right down.....".
- The landlord received a note from the same neighbor dated March 15, 2014 complaining about the volume of the woofer last night. It goes on and says "I assume by the 10:00 walk/round last night the woofer was off/down last night in unit ..."
- Another tenant sent an e-mail to the landlord dated March 27, 2014 stating that she just returned from a 2 week business trip on Friday night and wanted to go to bed at 9 to 9:15 but it was impossible because the tenants had guests over and their music was loud. It goes on and say "at least everything was turned off at 10 sharp."
- The landlord relies on a letter dated April 9, 2014.

The tenant disputed the basis for the termination based on the following:

- He acknowledged a late night party in July and November of 2013.
- The tenant testified that he has controlled the volume of the music since receiving the complaint from the landlord in November 2013.
- He testified that the music is turned off at 10:00 p.m. and the volume in other times is normal use.
- On one occasion he received a complaint about noise and it was the television at normal volume.
- The tenant referred to the e-mails received by the landlord from the neighboring tenants complaining about noise acknowledging the music is turned off at 10:00 p.m.
- The tenant submits the neighboring tenants are noise sensitive.

The representative of the landlord who testified at the hearing acknowledged that he had personal knowledge of excessive noise on only one occasion in the Fall of 2013. On questioning by the tenant the representative of the landlord acknowledged that he did not bring this to the attention of the tenants.

### Analysis

The landlord has the burden of proof to establish sufficient cause on a balance of probabilities. After carefully considering all of the disputed evidence I determined the landlord has failed to establish sufficient cause to end the tenancy. Section 47(1)(d) provides the landlord has grounds to end the tenancy where the tenants have “significantly interfered with or unreasonably disturbed” another occupant or the landlord. The landlord has one personal experience with excessive noise coming from the tenant's unit in the Fall of 2013. However, he did not bring this incident to the attention of the tenants. The landlord has not personally experienced any other noise event emanating from the tenant's rental unit. The landlord has received a number of complaints from the two surrounding tenants. However, those neighbors did not testify at the hearing. The tenant testified the noise that they neighbors are complaining off is “normal user.” He referred me to their complaint e-mails where they acknowledged that the tenants have turned their music off or down low at 10:00 p.m. I determined where there is credible testimony disputing the noise allegations made in the e-mails of complaint and where the neighbors making the complaints fail to attend the hearing to give their first hand testimony, the landlord has failed to establish sufficient cause under section 47(1)(d) of the Residential Tenancy Act.

The landlord also relies on section 47(1)(h) of the Residential Tenancy Act. While I accept the submission of the landlord that the conduct provisions of section 31 of the Residential Tenancy Act amounts to a material term, I determined the landlord has failed to prove the tenant has failed to rectify the breach within a reasonable period of time after receiving written notice to do so. There is insufficient evidence to establish that the noise from the tenants' rental unit is more than reasonable user. The evidence indicates that since the start of 2014 the tenant has turned off the music or reduced the volume significantly at 10:00 p.m. There is no evidence of late night parties in 2014. In my view the landlord has failed to establish sufficient cause based on the evidence presented.

Summary:

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. **As a result I order that the one month Notice to End Tenancy dated April 21, 2014 be cancelled.** The tenant shall continue with the rights and obligations of the parties remaining unchanged. The tenants have been successful with their application. **I order landlord pay to the tenant the sum of \$50 for the cost of the filing fee such sum may be deducted from the future rent.**

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: June 17, 2014

---

Residential Tenancy Branch

