



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Fairfield Block Hotel Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; his advocate and the landlord's agent.

During the hearing, the landlord did not verbally request an order of possession should the tenant be unsuccessful in his Application.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submits the tenancy began on September 5, 2013 as a month to month tenancy for a monthly rent of \$370.00 due on the 1<sup>st</sup> of each month. While the landlord indicated that the tenant felt that rent was due on the 5<sup>th</sup> of each month, the tenant did not dispute the facts of the tenancy agreement as presented by the landlord.

The tenant submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on June 1, 2014 with an effective vacancy date of July 1, 2014 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord submits the Notice was posted to the tenant's rental unit door on June 1, 2014. The tenant acknowledged receiving the Notice on June 1, 2014.

The landlord submits that since the start of the tenancy the landlord has received complaints from other occupants and from staff regarding the tenant's behaviour. He

submits that shortly after the tenant moved into the rental unit some other occupants signed a petition (September 19, 2013) to register a "formal complaint" stating the tenant was "excessively noisy, preventing us from enjoying our right to a reasonably quiet abode". The complaint is signed by 5 other occupants.

The landlord submits that he has provided the tenant with 3 warning letters. He states he provided a handwritten one to the tenant in September 2013 but that he did not keep a copy of this; one on February 15, 2014 and one on May 15, 2014. The landlord provided copies of the two most recent letters.

The tenant's advocate noted that the letter that the landlord has submitted that is dated February 15, 2014 is different than the one the tenant originally received in that it was not dated. The tenant acknowledges receiving the letter sometime in February 2014. The landlord explained that the original copy in his computer was not dated but that he added the date when he printed the letter for evidence for this hearing.

The landlord submits that the bulk of the complaints regarding the tenant are related to complaints that the tenant plays his radio too loudly; bangs things around in his room; and yells expletives repeatedly and loudly. The landlord submits that while some of these disturbances occur after the 10:30 deadline for quiet time not all do but that they are so significant that they disturb other residents and staff.

The landlord has also submitted pages from a log completed by staff during their various shifts. The log submitted includes pages from March 26, April 5, May 10, and June 14, 2014. These logs record two complaints from a neighbouring tenant and two interactions between the tenant and one staff member.

In the entry for May 10, 2014 the staff member records that the tenant was so loud that the staff member could hear him yelling from the office. It goes on to say that the tenant was asked to keep it down 3 times and the tenant responded by stating "sure". A later entry records the tenant was being loud again and that the response to the staff member this time came in the form of expletives.

The landlord clarified that the material term of the tenancy agreement that he submits the tenant breached was a part of their rules and regulations that prohibits tenants from causing any noise or disturbances from 10:30 p.m. until morning.

The tenant submits that the residential property has a number of occupants who contribute to a loud and rough property to live in. He states that the occupant of the unit next to him and who has lodged a number of the complaints took a dislike to him as soon as he moved and complained to the tenant about the type of music he listened to and attempted to have an altercation at a local restaurant.

The tenant submits that he has not caused any problems for the landlord; that he is a good tenant and does not stay up all night or generate any noise or disturbances that

could be considered unreasonable or significant. The tenant also submits that some of the allegations against him occurred at times other than after the 10:30 quiet time.

The tenant submits that the landlord has failed to provide any evidence that the parties had agreed, prior to the start of the tenancy, that the term in the tenancy agreement is material. The tenant also submits that the landlord has failed to provide sufficient evidence to establish any disturbances that may have been caused by the tenant were unreasonable in nature.

### 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 or the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Based on the testimony of both parties I accept the tenant's position that the landlord has failed to establish that any material term was breached. As such, I find the landlord cannot rely on such a breach as a cause to end the tenancy.

I accept that if the landlord's only record of complaints had been from another occupant who potentially disliked the tenant the complaints may have been created by that other occupant in an attempt to cause the tenant to lose his tenancy. However, I find that some of the disturbances were witnessed by the landlord's staff and as such, I find the landlord has established sufficient cause to end the tenancy.

### Conclusion

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

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: August 1, 2014

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Residential Tenancy Branch

