



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated May 27, 2014. The Notice alleges that the tenant or a person permitted on the premises by her has significantly interfered with or unreasonably disturbed another occupant or the landlord. Under s. 47(1)(d)(i) of the *Residential Tenancy Act* (the “Act”), such conduct is a lawful ground for eviction.

The Notice also claims the tenant has engaged in illegal activity but the landlord's representatives were quick to point out at hearing that there was no such conduct.

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenant has committed or permitted such conduct?

### Background and Evidence

The rental unit is a two bedroom apartment. The tenancy started in October 2012. The monthly rent is currently \$1141.80. The landlord holds a \$550.00 security deposit.

The tenant has two children ages one and four years old.

The landlord's witness Mr. McC. lives directly above the tenant. Since at least the end of February 2014, he has been complaining about being awoken by one of both children crying and screaming. It is the screaming that particularly disturbs him. He has hoped the behaviour would be corrected but he says it has not. He has kept a record and reports having been awakened by the crying or screaming on: March 19 and 29, April 4, 12, 15, 17, 18, 20, 23 and 24, May 12, 13, 26 and 28. He has asked the manager to move him to another suite but there are apparently none available. He has tried

earplugs but finds they irritate his ears. He hasn't contacted the landlord on any of the occasions he's been disturbed because it's at night, there's no landlord agent on site and the phone number for the landlord is merely a telephone service.

He says the noise has caused him to lose sleep and he feels that a recent accident at work was caused by his lack of sleep.

The landlord's representative Ms. D.L. testified that she had spoken to two other tenants in the building, a Ms. N.L. and Ms. B.J., who reported to her they had been woken up "every single night."

The tenant says that one of her children has been teething and that is the cause of the noise and it has now ended. .

The tenant says she tries her best to calm her children when they awaken. She says that the one year old, is very sensitive, awaking at the slightest noise. She says that sometimes the child will cry for half an hour or so. She says the four year old sleeps through the night. She thinks the incidents have been subsiding.

Mr. McC. In response says that it has not stopped or subsided. He says that one child starts screaming and then the other one.

### Analysis

The second hand evidence given by Ms. D.L. reporting what two other tenants told her is far too vague to be given any weight in a case involving the eviction of a tenant.

There is little doubt but that Mr. McC. is being disturbed by the crying and screaming of the tenant's children and I find as a fact that he is.

At the same time, there is no prohibition against raising young children in the building and it is a fact of life that young children sometimes cry and sometimes some scream. Some cry more than others, some less. No doubt some scream more than others.

There is no evidence about the age and quality of the apartment building; whether it is an old wood frame structure with little sound proofing between units or whether the tenant Mr. McC. is being disturbed by noise travelling through concrete floors and ceilings. In the first case a tenant must expect to hear more from adjoining apartments than in the latter.

On the evidence before me I cannot find that the crying and screaming in this case is significantly more than one should expect to hear from an apartment with a teething one year old and a four year old.

It is not alleged that the tenant is somehow causing or prompting the children to cry or scream, nor is it directly alleged that she is failing to attend to her children; to calm them and quiet them when they are agitated.

It is an unfortunate situation but the evidence does not establish conduct on the tenant's part that warrants her eviction under s. 47(1)(d)(i) of the *Act*. Her children are of an age when they are not responsible for their conduct.

### Conclusion

I allow the tenant's application and hereby set aside the Notice to End Tenancy dated May 27, 2014. As the tenant has been successful, she is entitled to recover the \$50.00 filing fee. I authorize her to reduce her next rent due by \$50.00 in full satisfaction of the 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: July 15, 2014

---

Residential Tenancy Branch

