



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF, MT

### Introduction

The Tenant's Application for Dispute Resolution, filed August 27, 2014, is seeking orders as follows:

1. To allow the Tenant more time to make an application to cancel a notice to End Tenancy;
2. For an Order cancelling the One Month Notice to End Tenancy for Cause issued August 1, 2014 (the, "Notice"); and
3. To recover the cost of filing the application.

The Tenant and the Landlord's resident manager, V.S., property manager, A.A., and general manager, A.W. appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

In a case where a Tenant has applied to cancel a notice for cause, Residential Tenancy Branch Rules of Procedure require the Landlord to provide their evidence submission first, as the Landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Preliminary Matter

As the Tenant did not apply for dispute resolution within 10 days of receiving the Notice, it is necessary to consider section 66(1) of the Act and whether exceptional circumstances exist.

The Tenant testified that the Landlord agreed to allow him another month to “prove himself”. Introduced in evidence was an email from A.A. to the Tenant, dated August 7, 2014, wherein A.A. writes that the Tenant has one month to “prove to us that there will be no further complaints” and that if they do not receive any more complaints, he will not proceed with the notice.

On August 21, 2014, the Landlord confirmed he was proceeding with the eviction.

Dealing solely with the issue of whether the above constitutes exceptional circumstances, I find that the Landlords’ willingness to allow the Tenant time to “prove himself” is such exceptional circumstances warranting an extension. The Tenant relied on this assurance in failing to dispute the Notice within the required 10 days and it would be unfair to deny her the opportunity to dispute the notice in such circumstances.

### Issue to be Decided

Should the Notice be cancelled?

### Background and Evidence

#### LANDLORD’S EVIDENCE

The general manager, A.A., testified as to the tenancy and stated that the tenancy began on December 1, 2013 for a unit on the 4<sup>th</sup> floor of a 15 story, 100 + unit building. Each floor has between 6-8 units per floor.

A copy of the Residential Tenancy Agreement was also introduced in evidence by the Landlord; clause 17 provides as follows:

*17. **CONDUCT.** In order to promote the safety, welfare, enjoyment, and comfort of other occupants and tenants of the residential property and the landlord, the tenant or the tenant’s guests must not disturb the comfort of any occupant of the residential property or other person, must not be made by the tenant or the tenant’s guests, nor must any noise be repeated or persistent after a request to*

*discontinue such noise or behaviour has been made by the landlord. The tenant or the tenant's guest must not cause or allow loud conversation or noise to disturb the quiet enjoyment of another occupant of the residential property or other person at any time and in particular between the hours of 10:00 p.m. and 9:00 a.m. If any tenant or tenant's guests cause another tenant to vacate his rental unit because of such noise or other disturbance, harassment, or annoyance or because of illegal activity by the tenant or tenant's guests, the tenant must indemnify and save harmless the landlord for all costs, losses, damages, or expenses caused thereby. The landlord may end the tenancy pursuant to the Act as one of his remedies.*

A.A. testified that the Landlord began receiving complaints about the Tenant from occupants on the 5<sup>th</sup> and 6<sup>th</sup> floor directly above the rental unit, as well as from the 3<sup>rd</sup> floor unit below and diagonal to the rental unit. According to A.A., the occupants on the 3<sup>rd</sup> floor are able to observe the Tenant's balcony.

The resident manager, V.S., testified that the complaints about the Tenant began approximately March 2014 and that initially the other occupants verbally complained about the Tenant. After this, the other occupants began putting their complaints in writing. According to V.S. the nature of the complaints regarding the Tenant was in relation to loud music and marijuana smell from his rental unit.

The Landlord introduced in evidence a photo of garbage which V.S. testified was found on the 5<sup>th</sup> floor and in which was located a federal tax return bearing the Tenant's name.

V.S. testified that the police have attended several times in response to noise complaints about the Tenant. V.S. provided a police incident number in support of this allegation and stated that on one occasion the police came, issued a warning, and then returned that evening after further complaints to issue a fine for \$500.00.

V.S. further testified that when she attempted to discuss the complaints with the Tenant, that the Tenant was rude, swore at her and slammed the door. V.S. testified that on that particular occasion she also heard the music and stated that it was clearly coming from the Tenant's rental unit. V.S. confirmed that she has heard loud music coming directly from the Tenant's rental unit 10-15 times and that the loud music is usually after 9:00 p.m. and until 1:00 a.m. or as late as 1:30 a.m. When asked if it was possible the music came from another unit, she stated that it was very clear that the music was coming from the Tenant's rental unit.

Introduced in evidence was a warning letter, dated May 21, 2014, from the Landlord to the Tenant regarding allegations of marijuana smoke emanating from the Tenants' rental unit which was said to be disturbing other tenants.

Also introduced in evidence was the Tenant's response letter, dated May 22, 2014, wherein he wrote that he does not use marijuana nor has marijuana been smoked in his unit. Also within this letter, the Tenant alleges that he too has smelled marijuana smoke from another occupant on the same floor as well as garbage and cigarette odours which come through his ventilation fan.

The Landlord confirmed that aside from the Tenant's complaint about this other unit, no other occupants had complained.

Both V.S. and A.A. testified as to the annual suite inspection they performed on July 17, 2014 at which time they observed and smelled marijuana and signs depicting the number "420" in the Tenant's rental unit.

The Landlord introduced a further email dated July 30, 2014 from A.A. to the Tenant which appears to be a response to the May 22, 2014 letter from the Tenant. In this email, A.A. apologizes for his late reply and confirms that he wanted to get "facts straight" and to ensure that the complaints of noise and smoke were not just hearsay. A.A. confirms that the building manager received further complaints regarding noise and smoke from the Tenant's rental unit. A.A. further writes that upon investigating the sounds and smell it was apparent the smell and smoke were coming from the Tenant's unit. A.A. also writes about the Annual Suite Inspection on July 17, 2014 at which time A.A. smelt marijuana, observed marijuana resin on a coffee table and saw two signs with the number "420" on them. A.A. also writes that he observed speakers and a TV, contrary to the Tenant's claim that he does not have a sound system.

The Landlord issued a 1 Month Notice to End Tenancy for Cause, dated August 1, 2014.

### TENANT'S EVIDENCE

The Tenant filed the Tenant's Application for Dispute Resolution on August 27, 2014 wherein he wrote that the noise and order were coming from another suite on his floor and that the Landlord has not investigated the Tenant's complaints about this other rental unit. The essence of the Tenant's position at the hearing was that the marijuana smell and loud music originate from another unit on his same floor. In support he

produced in evidence emails he had previously sent to the Landlord about this other unit.

The Tenant also testified that he invited V.S. into his rental unit to investigate the odour and sound complaints; according to the Tenant V.S. declined this offer.

The Tenant also submitted in evidence a receipt for his home theatre system which he testified was delivered on July 11, 2014. He further stated that prior to July 11, 2014 he did not have a means to play music and as such the noise precipitating the complaints could not have come from his rental unit.

The Tenant also introduced in evidence an email dated August 5, 2014 wherein the Tenant writes that his friends did use marijuana on his balcony and that he only obtained a sound system on July 11, 2014.

In addition, the Tenant introduced into evidence transcriptions of text messages between himself and the occupant directly above his rental unit. In these messages, sent at approximately 9:30 p.m. on Sunday July 27, 2014, the upper floor occupant asks the Tenant to turn down the music or turn down the bass.

The Tenant also introduced in evidence an email dated August 7, 2014 wherein the Landlord provided the Tenant with a month to prove himself.

The Tenant testified that the police have been to his rental unit as a consequence of noise complaints and that on one occasion the police attended, left and then returned as a result of a further complaint, at which time a \$250.00 fine for noise violation was issued.

In response to the Landlord's allegation that he deposited his garbage on the 5th floor, the Tenant stated that he had, in the past, left his garbage outside his rental unit on few occasions and twice someone else took his garbage. The Tenant stated that he believed the strewn garbage with his income tax information was simply the result of the Landlord "trying to tarnish [his] reputation and set [him] up".

### Analysis

I find that the Landlord has established cause to end the tenancy due to the Tenant's excessive noise and complaints by other occupants regarding the Tenant's loud music.

I accept the Landlord's evidence that at least three other occupants have complained about the Tenant's excessive noise. I accept the evidence of V.S. that she has heard loud music coming from the Tenant's rental unit at least ten times. Further, I accept V.S.' testimony that when she attempted to speak to the Tenant about the loud music, that the Tenant was rude, swore at V.S. and slammed the door. Further, I find that the police have attended on at least two occasions regarding complaints about the Tenant's noise, and that on one occasion the Tenant was fined. I do not accept the Tenant's evidence that the noise originates from another rental unit on his same floor. For these reasons, I find that the Tenant has significantly interfered with or unreasonably disturbed another occupant contrary to section 47(1)(d)(i) of the Act and that such behaviour is cause to end the tenancy.

Additionally, clause 17 of the Residential Tenancy Agreement clearly provides that the Tenant is not to disturb the comfort or quiet enjoyment of any occupant of the residential property. I find that the repeated noise complaints regarding the Tenant's noise is a breach of a material term of the tenancy agreement justifying an end to the tenancy as provided by Clause 17.

Accordingly, I dismiss the Tenant's Application to cancel the 1 Month Notice to End Tenancy for Cause.

### Conclusion

The Landlord has proven that the Tenant's excessive noise, and resulting complaints from other occupants, as well as the attendance by the police in response to such complaints are cause sufficient to terminate the tenancy for the reasons given on the notice and as such the Tenant's application to cancel the notice is dismissed.

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: October 10, 2014

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Residential Tenancy Branch

