



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      cnc, opc

### **Introduction:**

The tenant applies for resolution of a dispute in the tenancy at the above noted address, and requests an order to cancel a Notice to End Tenancy, which alleges that:

- the tenant or a person permitted on the residential property has significantly interfered with or unreasonably disturbed another occupant or the landlord, or seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- the tenant has caused extraordinary damage to the unit or property.

The landlord applies for an Order of Possession.

At the hearing, both parties withdrew any other claims alleged, and agreed that the hearing be limited to these claims.

### **Issue(s) to be decided:**

Should the Notice to End Tenancy be cancelled, or has the landlord established grounds to end this tenancy?

### **Background and Evidence**

This tenancy began March 15, 2002. The current monthly rent is \$1,252.00 due on the 1<sup>st</sup> day of each month. A one month Notice to End Tenancy was given to the tenants on September 4, 2014, to end this tenancy effective October 31, 2014.

The landlord alleges that the tenants unreasonably disturb the lower tenants, through loud music, heavy stomping and smoking. The landlord includes a letter from a former downstairs tenant who vacated about two years ago, and who writes she moved out due to loud music, and late night noise. The landlord also includes a letter from the current downstairs tenants, who writes they hear loud stamping, loud music, and have been told by the upper tenants that their cooking of onions bothers them.

There was a complaint by the lower tenants to the landlord, who went to the premises and personally heard very loud noise from the premises. The landlord further submits that the upper tenants' door is cracked and the frame is damaged, presumably from it being repeatedly kicked or slammed from the inside.

The tenants allege that they are seldom loud, and the complaints are exaggerated. On the night when the landlord heard the loud noise, it is admitted that a guest was over and the music was loud. However, it was only 10:00 pm, and the noise bylaw is in effect after 10:30. One tenant is allergic to onions, and the tenants' exhaust fan does not work and therefore the tenants complain when the tenant below cooks her pungent meals. The tenants have been provided only one complaint. The tenants allege the door was cracked because a deadbolt was loose, and hit the frame repeatedly when the door was being closed, eventually causing the damage.

**Analysis:**

It is clear that the conduct of the upper tenants has been disruptive to both the landlord and to the lower tenants. I need look no further than to the noise made that was sufficient to cause the lower tenants' baby to begin crying. I must consider, however, whether any of the grounds upon which the landlord issued the one month notice are unreasonably disturbing, or provide sufficient cause to warrant the ending of this tenancy. I also must consider whether the damage to the door is caused by the tenants and is extraordinary damage.

The landlord from a previous tenant relates to incidents from two years ago. That former tenant did not attend the hearing, and to be fair to the upper tenants, I note that I had no opportunity to question the tenant about her letter. Accordingly, I reduce the probative value of this evidence. Similarly, I have considered the letter of the current lower tenants. While they are disturbed by the conduct of the upper tenants, I cannot determine on the basis of the letter alone as to the degree of such disturbance, and I had not opportunity to question them about this.

I accept that there was an incident the landlord observed that involved loud noise. Again, this was obviously disturbing, but if I accept the tenant's testimony, this was a rare occurrence that has not occurred since. I do note that the issue is not when the noise bylaw becomes effective. The issue is whether the tenants' noise is unreasonably disturbing to the lower tenants, regardless of the time of day.

While the door and frame are clearly damaged, the landlord has not proven that there is any extraordinary damage to the premises. The damage to the frame may well be

attributable to a lost deadbolt, and the cracked door can be salvaged by gluing it back together.

The onus of proof to end a tenancy lies with the landlord, and in this case the landlord's evidence fails to meet that burden of proof. While it may be the case that the tenants have been disruptive, it has not been proven on a balance of probabilities that the disruptions were unreasonably disturbing. I note that ongoing disruptions even if not severe, can become unreasonable over time, and should the tenants continue to disrupt the lower tenants, the landlord should not hesitate to warn them of any complaints, and serve a further Notice should the disruptions persist.

### **Conclusion**

The subject Notice to End Tenancy is cancelled. The tenancy continues.

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 27, 2014

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Residential Tenancy Branch

