



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DAVID BURR LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 1 Month Notice to End Tenancy for Cause (the “notice”) issued on September 23, 2014.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, 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.

Although the landlord check the wrong box on the notice, it was clear that the tenant was fully aware of the reason, therefore, I have I have amended the notice to reflect the appropriate reason.

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.

### Issue to be Decided

Should the notice to end tenancy issued on September 23, 2014, be cancelled?

### Background and Evidence

The parties agreed that a one month notice to end tenancy for cause was served on the tenant indicating that the tenant is required to vacate the rental unit on November 1, 2014.

The reason stated in the amended notice to end tenancy was that the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord's agent testified that he had received numerous complaints from other renters that the tenant's child is constantly jumping, running and banging on things and disturbing their quiet enjoyment.

The landlord's agent testified that there were two main complainants. One complainant lives below the tenant; however, she wishes to remain anonymous. The landlord's agent stated the second complainant will be connected to the telephone conference to testify.

The landlord's agent testified that after they received the initial complaints, they issued a warning letter dated August 29, 2014. However, they have been informed that the noises were still continuing and received a further written complaint on September 19, 2014 and as a result the notice to end tenancy was issued on September 23, 2014.

The landlord's witness JM testified that he shares a wall with the tenant. JM stated that the tenant's child would make a loud siren sound, and was always running back and forth, and making knocking sounds on the walls. JM stated that the sounds were worst in the early morning. JM testified that things have improved since school started at the beginning of September 2014 and the letter he sent to the landlord on September 19, 2014, was largely referring to incidents that occurred in the summer months.

The tenant testified that he was not aware that his neighbors were bothered by the sounds of his child until the landlord's letter dated August 29, 2014, was received on September 15, 2014. The tenants stated by this time his child was attending full time school and any noise that was heard during the day had ceased. The tenant stated he then received the notice on September 23, 2014, ending the tenancy and has no idea what noise might have caused such a disturbance. Filed in evidence is a copy of the warning letter the tenant received, dated August 29, 2014.

The tenant testified that the landlord did not give him a reasonable time to address any concerns and is unclear what the actual issues were.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Upon review of the 1 Month Notice to End Tenancy for Cause, I find the notice is completed in accordance with the requirements of section 52 of the Act.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord.

In the case before me, one of the main complainants did not write a signed witness statement and did not attend the hearing as they wanted to remain anonymous. I find the principles of natural justice require that a person be informed and given particulars of the claim against them, which would include providing a signed witness statement or have the complainant attend the hearing and provide affirmed testimony. I find it would be unfair and unreasonable to consider any evidence that is given anonymously. Therefore, I have given no weight to any evidence given anonymously by this complainant.

The evidence was that the landlord's agent sent a warning to the tenant on August 29, 2014, which was received on September 15, 2014, by the tenant. I have reviewed the letter and the only issue in the letter was regarding the child jumping. There is no indication in the letter of the child making loud sounds, such as siren sounds or banging on the walls. I find the letter is very vague and provides no details of when the excessive noise disturbance was occurring, such as early morning or late at night in order to correct the behavior, as it is not unreasonable for the landlord or other renters to expect some noise from children playing during the day as that is a normal household noise when living in multifamily accommodations.

Further, the evidence of the landlord's agent was that he received a further letter of complaint on September 19, 2014, after the warning letter was issued. The evidence of the landlord's witness JM was that the letter he wrote was largely referring to incidents

that occurred during the summer months prior to the warning letter. The witness confirmed that since school has started at the beginning of September 2014, there has been a considerable improvement to the noise level.

In light of the above, I find the landlord has failed to provide sufficient evidence to support the notice was issued for the reasons stated. Therefore, I grant the tenant's application and cancel the 1 Month Notice to End Tenancy for Cause, issued on September 23, 2014, the notice has no force or effect. The tenancy will continue until legally ended in accordance with the Act.

### Conclusion

The tenant's application to cancel the 1 Month Notice to End Tenancy for Cause, issued on September 23, 2014, is granted. The notice has no force or effect.

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: November 17, 2014

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Residential Tenancy Branch

