



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNC

### Introduction

This hearing convened as a result of a Tenant's Application to Cancel a 1 Month Notice to End Tenancy for Cause issued on November 17, 2014 (the "Notice").

### Issue to be Decided

Should the Notice be cancelled?

### Background and Evidence

Submitted in evidence was a copy of the Residential Tenancy Agreement which indicated as follows: the tenancy began January 1, 2014; monthly rent was payable in the amount of \$800.00 per month; and, the Tenant paid a security deposit on December 15, 2013.

### LANDLORD'S EVIDENCE

The Landlord testified that he is not the property owner, but is a Tenant of the property owner with an express right to sublet and rent the basement and assume the role of Landlord. Also introduced in evidence was a copy of his tenancy agreement with the property owner.

The rental unit is located in a building with four units and is in the basement below the Landlord. The Landlord testified that his bedroom is directly above the Tenant's living room.

The Landlord submitted the following:

- A letter dated July 23, 2014 wherein the Landlord conveys his concerns with noise coming from the Tenant's rental unit and notes such occurrences on June 13, July 8, July 17, July 20;
- A letter dated October 31, 2014 wherein the Landlord again conveys his concerns with noise coming from the Tenant's rental unit and references an incident that evening

where he could hear the Tenant's television after midnight. The Landlord also writes that the Tenant was "convers[ing] in the driveway in a loud enough manner so as to be heard inside my unit".

- A letter dated November 17, 2014 which accompanied the Notice as well as a Mutual Agreement to End tenancy. In this letter the Landlord conveys his concerns with noise coming from the Tenant's rental unit, as well as his concerns about parking and the gate to the Tenant's yard.
- The Landlord's audiology test results from May 10, 2011 and November 24, 2014 which the Landlord says he submitted to show he has hearing loss.
- A printout showing the Landlord's participation in iron man competitions which he says he submitted to show that he is physically active and consequently a sound sleeper.
- A document purporting to be copies of text messages between the Landlord and the Tenant on June 13, July 8, October 10, October 31 (but which appear to be summaries of such messages drafted by the Landlord) wherein the Landlord writes to the Tenant about his concerns about noise. Notably, on October 31, 2014 at 12:53 a.m. he writes: "Turning the music down is not sufficient. Please turn it off."
- Emails between the Tenant and the Landlord in January 2014 which the Landlord says he submitted to show there was an "orientation process". Of note, in these emails the Landlord communicates that he received a "noise notice" because of his dogs.

The Landlord testified that in January of 2014 he conveyed his expectations to the Tenant, during what he described as an "orientation process", that she would not be permitted to make any noise between midnight and 7:00 a.m.

The Landlord stated that despite this agreement, the Tenant's music and television sound, as well as talking amongst her guests, is sufficient to wake him in the night.

The Landlord also testified that he has been woken up by the nearby bus stop as well as patrons from the local pub.

The Landlord stated that he had received a complaint from his municipal bylaw enforcement officer about his dogs barking. He stated that he did not believe this complaint to be legitimate as he says his dogs were not at home when the barking is alleged to have occurred.

The Landlord also testified that he believed the Tenant should keep her gate closed to prevent his dogs from escaping out onto the street. He stated that he has a fenced and gated yard which is separate from the Tenant's yard, but he believes her gate to be a secondary barrier which protects his dogs.

In terms of any issues with respect to parking, the Landlord testified that the Tenant erroneously believed that she was able to park more than one vehicle at the rental building.

### TENANT'S EVIDENCE

The Tenant denied making excessive noise and stated there was no such "orientation process" as alleged by the Landlord. She further denied any agreement that she would have her television or music shut off after midnight. The Tenant stated that she is a parent to a small child and as such is not nocturnal as alleged by the Landlord. She also notes that her son is not awoken by her music, television or conversations and as such she believes the Landlord is a light sleeper.

The Tenant says that the first time the Landlord raised noise as an issue with her was when he delivered the July 23, 2014 letter. She said that she apologized to the Landlord and took corrective measures by turning off her surround sound at midnight to minimize noise.

The Tenant testified that the Landlord is very aggressive and yells at her and calls her names.

She says that she is woken up by sounds from his rental unit as well, but that she acknowledges that the walls are thin and sound travels. In particular she said that she hears him get up every day at 4:00 a.m. to feed his dogs, yet she doesn't complain to him about this. She also testified that for a period of time the Landlord had four dogs upstairs. She testified that the Landlord's dogs bark all the time and so much that one of the neighbours complained.

Also introduced in evidence by the Tenant were letters from various people including the following:

#### *A letter from J.C., a friend of the Tenant's*

J.C. indicates that he is regularly at the rental unit. He also notes that the Tenant never has her television at an unreasonable level, and that when the Landlord has asked her to turn it down she does so without question and to the point where the movie or TV show aren't audible.

J.C. also writes that the Landlord frequently has his TV at a loud volume after midnight which has woken the Tenant's son. J.C. also writes that the Landlord's dogs bark constantly and the Landlord gets up at 4:00 a.m. to feed and take the dogs out which is disturbing and wakes everyone.

Further J.C. writes that the Landlord is extremely aggressive in the way he talks to the Tenant and states that he yells at her like she is a child. J.C. also notes that the Landlord does so in front of the Tenant's four year old son and that he has stated that "he will find any reason to evict her".

J.C. writes that only recently has the Landlord raised any issue with respect to parking and that until recently guests of the Tenant parked on the lawn without incident.

Finally, J.C. writes that he suspects the Landlord has been entering the Tenant's rental unit without her knowledge or consent.

*A letter from the Tenant's mother, L.F.*

L.F. also indicates that she is frequently at the rental unit. She writes that the Tenant has her television volume at a normal level and that she has been present when the Landlord has asked the Tenant turn it down and L.F. has observed the Tenant do so immediately. L.F. also writes that the Tenant has informed her that the Landlord believes she should not have any audible electronics after midnight.

L.F. also writes that the Landlord only recently began raising the issue of the side gate and yard, and that it is her view that the Landlord should contain his dogs in his back yard rather than expecting the Tenant to ensure their safety by closing the gate to her private side yard. As well, L.F. writes that until recently there was no issue with respect to parking but that recently the Landlord has been insisting that the Tenant only park one car in the driveway.

Finally, L.F. also writes that she suspects the Landlord has been entering the Tenant's rental unit without her knowledge or consent.

As noted, the rental unit is located in the basement of a fourplex directly below the Landlord. The Landlord shares the same floor with S.M. and below S.M.'s unit is P.J.; consequently, P.J. also shares the same floor as the Tenant and connecting walls. Submitted in evidence by the Tenant were letters from both S.M. and P.J.

*A letter from the Tenant's neighbour, S.M.*

S.M. writes that she has been a neighbour of the Tenant since December 2013. She writes that she has had no issues with the Tenant and finds her to be very respectful. Further, she writes that her rental unit is attached to the Tenant's and she has never heard any disturbing noise from the Tenant nor has she or her family been disrupted by the Tenant. Further, S.M. writes that the only noise complaint that she has is with respect to the Landlord's dogs barking excessively at all hours of the day. Finally, S.M. writes that she believes the Landlord is being "grossly unfair and controlling".

*A letter from the Tenant's neighbour, P.J.*

P.J. notes he is the "direct neighbour" of the Tenant. He writes that she is not a disruptive neighbour and that he has never had any issue with noise from her suite and that in fact he

finds her to be a quiet and respectable neighbour. He describes one occasion when he was in the Tenant's rental unit when the Landlord came downstairs and began banging on her door while her four year old son was sleeping. According to P.J. the Landlord's manner was aggressive and his voice was raised when he told the Tenant to turn off her TV and when he told her that all electronics needed to be off.

The Tenant also submitted photos of the rental unit including photos of the Landlord's back yard and her side yard as well as both gates; photos of the parking area, front yard and street; and photos of her rental unit which she says show the Landlord accessed areas of her suite without her knowledge or consent when replacing a smoke detector.

### LANDLORD'S REPLY EVIDENCE

In reply the Landlord stated that the parking issue had been resolved in consultation with the Tenant and the Tenant's mother.

The Landlord stated that he believed the Tenant should keep her gate closed to provide a secondary barrier and ensure his dogs do not run out into traffic.

The Landlord reiterated that the main reason for issuing the Notice was the Tenant's excessive noise between midnight and 7:00 a.m. He stated that it is the music and company together which makes the noise excessive.

The Landlord stated that his bedroom is directly above the Tenant's living room. When asked if there is another bedroom in his living area, he stated that there is another bedroom, which he uses as a guest room, and which is directly above her kitchen. He stated that he has moved to the guest room on occasion but that when he does he has heard the Tenant and her guests outside talking and as such he does not believe this to be an adequate solution.

The Landlord acknowledged that he wakes every day at 5:00 a.m. to feed his dogs. Until very recently he says he was doing so at 4:30 a.m. He also testified that for a period of time he was looking after two additional dogs such that he had four in his unit. Again, he stated that he did not believe the municipal noise complaint to be accurate as he says he was not home when the complaint was made.

### Analysis

The Landlord alleged that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

Where a Notice to End Tenancy comes under dispute the Landlord bears the burden to prove the tenancy should end for the reasons indicated on the Notice. The burden of proof is based on the balance of probabilities.

I find that the Landlord's expectation that the Tenant keep her gate closed and provide a secondary barrier for his dogs to be unreasonable.

I find that the Landlord failed to prove that the Tenant's noise was excessive and that she significantly interfered with or unreasonably disturbed the Landlord. The Landlord failed to provide any corroborating evidence of the alleged noise such as evidence from third parties or audio recordings. In fact, the evidence from the other occupants of the four-plex supports the Tenant.

The Landlord submitted that any noise which wakes him and prevents him from immediately falling back to sleep is excessive. I accept the evidence of the Tenant and the Tenant's guests that the Landlord has told the Tenant to turn off her electronics at midnight or use headphones. I accept the Tenant's evidence that there was no such "orientation process" which set out this expectation and find that it was not a term of the tenancy. While the Landlord may wish to have complete silence from midnight to 7:00 a.m., he has failed to prove on a balance of probabilities that the Tenant agreed to this, or that this is a reasonable expectation.

The Landlord submitted a decision of the Branch from November 26, 2010. In this case, the police had been called to the rental unit on three separate occasions, and the Tenants admitted letting an intoxicated guest into their rental unit who they say caused excessive noise. This case is distinguishable on its facts.

The Landlord also submitted a decision of the Branch from August 18, 2011. In this case the Arbitrator found that the complainant may be ultra-sensitive to noises that are to be expected in multi-family buildings. I find the following passage from that case to be of assistance with the present case:

As mentioned to the parties during the hearing, almost every occupant will make noise that will eventually be heard by another occupant in multiple family buildings. The level and frequency of the noise will depend on several factors, including: construction of the building, flooring materials, insulation, and the like. In order to evict the tenant it must be shown that the tenant's actions have unreasonably disturbed another occupant meaning, a tenant cannot be evicted merely because they have been heard or have on occasion disturbed another occupant. Unreasonable disturbance would include excessive noise which is noise that is exceptionally loud or on-going, but does not include normal sounds from normal daily activity.

The Arbitrator in the aforementioned case also encouraged the parties to continue to work together in an effort to deal with the neighbour's complaints. I also encourage the parties to

work together to find a solution to the Landlord's concerns with the sound coming from the Tenant's rental unit.

Conclusion

The Landlord failed to meet the burden of proving that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord and accordingly the Notice is set aside. The Tenancy will continue until ended in accordance with the Act.

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: December 16, 2014

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Residential Tenancy Branch

