



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

CNC

### **Introduction**

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated October 30, 2014.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed.

The parties were also permitted to present affirmed oral testimony and make submissions during the hearing. I have considered all of the evidence properly served and the verbal testimony given by the parties during the hearing.

### **Issue(s) to be Decided**

Should the One Month Notice to End Tenancy for Cause be cancelled?

### **Background and Evidence**

Submitted into evidence was a copy of the One-Month Notice to End Tenancy for Cause dated October 30, 2014 showing an effective date of December 1, 2014, written statements from the tenant, copies of communications and witness statements from other residents in the complex supporting the tenant.

The One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The landlord testified that they have received complaints and notifications from the strata council alleging that the tenant has caused excessive noise. The landlord testified

that they gave the tenant a written warning about excessive noise approximately 2 years ago.

The tenant disputed that they created excessive noise and stated that the accusation made by the strata alleging that the tenant was observed to be yelling off the balcony was not true. The tenant testified that it was another resident who had been making this noise and they were being wrongly accused of the conduct.

The landlord acknowledged that they did not personally witness this incident or others reported to them by the strata council. The landlord also acknowledged that they were not in a position to investigate first-hand and relied on communications from the strata council. The landlord pointed out that they are at risk of being fined by the strata council and have been asked in writing by the strata council to evict this tenant.

The landlord feels the tenant's application to cancel the 1-Month Notice to End Tenancy for Cause should be dismissed and the landlord is seeking an order of possession.

The tenant's position is that the landlord has not proven that the One Month Notice to End Tenancy for Cause is warranted and it should rightfully be cancelled.

### **Analysis**

Section 28 of the Act protects a tenant's right to quiet enjoyment. This right applies equally to all residents in the complex.

I find that, if the tenant did engage in some of the conduct described this would likely constitute significant interference and unreasonable disturbance of other occupants or the landlord.

However, the question of what occurred is not easy to determine with nothing more than conflicting verbal and written testimony before me and reports received from third parties who were not present at the hearing to give testimony and be cross-examined. The burden of proof to justify ending the tenancy is on the landlord.

Given the above, I find it necessary to cancel the One Month Notice. However, the tenant is cautioned that this decision will now serve as a written warning that if they engage in conduct that disturbs others, this may justify terminating the tenancy for cause under the Act.

Based on the evidence before me, I hereby order that the 1-Month Notice to End Tenancy for Cause is cancelled.

**Conclusion**

The tenant is successful in the application and the 1-Month Notice to End Tenancy for Cause is ordered cancelled.

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 09, 2014

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Residential Tenancy Branch

