



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC FF

### Introduction

This hearing dealt with the tenant's application to cancel a notice to end tenancy for cause. The tenant and the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

### Background and Evidence

On October 21, 2014 the landlord served the tenant a notice to end tenancy for cause. The notice indicates that the reason for ending the tenancy is that the tenant unreasonably disturbed another occupant.

The landlord stated that they had received a few noise complaints from occupants in two units located below the tenant's unit. The landlord then served the tenant two warning letters, on September 9, 2014 and October 1, 2014. The landlord stated that they received a third complaint on October 13, 2014, and on October 21, 2014 the landlord served the tenant with the notice to end tenancy. The landlord's evidence was that the tenant's noises were of a slamming door, loud walking and stomping on the floor. The landlord stated that they investigated the possibility of reducing noise but

there was nothing that could be done to rectify the situation because the door is very old and they cannot put additional soundproofing insulation between the floors.

The tenant's response was that when he received the warning letters from the landlord he tried to reduce the noise. The tenant stated that his balcony door is old and heavy, and makes noise when the tenant goes out on his balcony to smoke. The tenant stated that he put an area rug down on his floor, but there may not be enough insulation between the floors. The tenant stated that his rental unit used to be used as an office, and the occupants who live below him had likely grown accustomed to not hearing noise above them in the evenings. The tenant stated that he recently spoke to the downstairs occupants, and there has not been a problem for months.

### Analysis

I find that the notice to end tenancy is not valid.

Based on the evidence of both the tenant and the landlord, it is clear that the patio door in the rental unit is quite old. The landlord's evidence was that because of the age of the door and the construction between the floors of the units, the landlord could not rectify the noise problems. It is also clear that the occupants below the rental unit had the benefit of the rental unit being used as an office for several years and had become accustomed to the lack of noise during non-business hours, and they were disturbed by the noise once the tenant began occupying the unit. I accept the evidence of the tenant that he has taken reasonable steps to reduce the noise. The occupants of the lower units cannot reasonably expect that the same absence of noise while a tenant is occupying the unit above them as when the unit was not occupied during non-business hours. I therefore cancel the notice to end tenancy.

As the tenant's application to cancel the notice was successful, he is entitled to recovery of the filing fee for the cost of his application.

### Conclusion

The notice to end tenancy dated October 21, 2014 is cancelled, with the effect that the tenancy continues until it ends in accordance with the Act.

I grant the tenant recovery of his \$50 filing fee, and he may deduct that amount from his next month's rent.

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 4, 2014

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Residential Tenancy Branch

