



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KELSON GROUP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OLC, FF

### Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated November 26, 2014. The Notice alleges that the tenant or a person permitted on the property by her has “significantly interfered with or unreasonably disturbed another occupant or the tenant.” Proof of that allegation is a ground for eviction under s. 47 of the *Residential Tenancy Act* (the “Act”).

She also seeks an order that the landlord comply with the law by causing the noise from the suite located above hers to cease or diminish.

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that there are good grounds for the Notice or that the tenant is entitled to a compliance order?

### Background and Evidence

The rental unit is a studio apartment in a 51 unit, wood frame, apartment building of about 30 years in age.

The tenancy started December 1, 2012. The current monthly rent is \$613.00. The landlord holds a \$297.00 security deposit.

The landlord’s representative Mr. S. testifies that the tenant has consistently complained about the noise caused by the tenants living in suite directly above. As a result, he says, the landlord has evicted tenants twice from that suite and twice relocated tenants from that suite to another suite in the building.

Mr. S. has come across information that leads him to believe that at least some of those tenants were actually good tenants. He has concluded that the tenant's complaints, which now include complaints about noise from the current tenants above, are without justification. He feels that the tenant has been harassing the tenants above both in the building and off the premises.

### Analysis

The ending of a tenancy resulting in eviction of a tenant from her home is a serious matter. A landlord purporting to evict a tenant for cause will be expected to provide convincing evidence of a violation of s. 47 of the *Act*.

An adjudicator will be justified in scrutinizing evidence with greater care and consider the cogency of it if serious allegations are to be proved by it (*Continental Insurance Co. v. Dalton Cartage Co.*, [1982] 1 SCR 16).

In this case the landlord's representative has changed his mind about the tenant and concluded that her complaints in the past were likely groundless and that her complaints about the current tenants above are groundless too.

It does not appear the tenant has been informed of this change or warned that anyone is or might be interfered with or disturbed.

The landlord does not appear to have actually investigated any of the tenant's noise complaints in the sense of having someone attend and assess the basis of a particular complaint. The landlord has simply given her the benefit of the doubt in the past but no longer will do so.

The landlord has not provided the tenant with particulars of what conduct is alleged to have justified eviction or when it occurred.

The landlord has not provided the evidence of anyone claiming to have been significantly interfered with or unreasonably disturbed.

For these reasons, the Notice cannot stand. The landlord has not provided evidence to justify the allegations in that Notice.

I dismiss the tenant's claim for a compliance order. With the direction given by me at hearing, should the tenant have a further complaint about noise from above, the

landlord should properly investigate and determine whether or not there is any basis for that complaint. If it becomes clear to the landlord that the complaints are groundless, the tenant should be told. If the landlord reaches that conclusion and the tenant disagrees, the tenant may re-apply for compensation and at that hearing, the veracity of the complaints can be proved or disproved.

### Conclusion

The Notice to End Tenancy dated November 26, 2014 is cancelled. The tenant's claim for a compliance order is dismissed. I award the tenant recovery of her filing fee and authorize her to reduce her next rent due by \$50.00 in full satisfaction of the fee.

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: January 08, 2015

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Residential Tenancy Branch

