



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES LIMITED  
and [tenant name suppressed to protect privacy]

## **Dispute Codes:**

CNC, FF

## **Introduction**

This Application for Dispute Resolution by the tenant was seeking to cancel a 1Month Notice to End Tenancy for Cause dated and served on January 21, 2015.

Both parties were present at the hearing. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served. The tenants' advocate was present and a witness appeared for the landlord.

The 1Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that the tenants had breached a material term of the tenancy.

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

Should the 1 Month Notice to End Tenancy for Cause be cancelled?

## **Background and Evidence**

The tenancy began on November 1, 2014 as a fixed term tenancy ending on May 31, 2015. The rent set is \$995.00. A security deposit of \$497.50 and pet damage deposit of \$497.50 had been paid.

Submitted into evidence was a copy of the 1 Month Notice to End Tenancy for Cause dated January 21, 2015, showing an effective date of February 28, 2015 to end the tenancy. Evidence submitted by the landlord included a copy of the tenancy agreement and addendum, a copy of the tenants' insurance form and a copy of a pet agreement, all signed by the tenants. The landlord submitted copies of two warning letters.

The landlord's letter dated December 8, 2014 states that the landlord has received noise complaints from a resident about the tenant's dog barking and whining at 2:00

a.m. when the dog was apparently left alone. The letter points out that the tenants' agreement contains the following statement:

*"The tenant or the tenant's guest must not cause or allow conversation or noise to disturb the quiet enjoyment of another occupant...at any time and in particular between the hours of 10:00 p.m. and 9:00 a.m."*

In the warning letter to the tenant, the landlord acknowledged that:

*"The building is older and not insulated like new buildings, therefore noise travels more and be heard by other residents. We ask that you try not to keep your dog alone during the evenings and early morning hours."*

The landlord testified that the tenants did not respond to this letter.

The second warning letter dated December 29, 2014, that the landlord had placed in evidence, again states that a complaint has been received about barking/whining from the dog that could be heard by other residents. This letter cautions the tenant that if another complaint is received, they will ask the tenants to remove their dog.

The letter goes on to allege that the tenants have had *"a number of parties that go late into the evening"* with singing, loud music and smell of marijuana. The landlord's letter includes excerpts from the tenancy agreement about noise and behaviour and quotes the term forbidding any smoking on the property.

The tenant testified that they never received this second warning letter dated December 29, 2015.

The landlord stated that, although they received complaints from more than one resident, only the resident living below the tenants agreed to give a written statement and to appear as a witness. A copy of a notarized statement from the resident living below the tenants, dated January 29, 2015, is in evidence.

This witness confirmed the content of their notarized statement in which there are allegations that they were disturbed by an alarm continuously beeping one Sunday afternoon and were also disturbed by sounds of the dog whining, barking and moving continuously around the apartment for several hours.

The resident mentioned that the tenants had a party that went overnight on November 14, 2014 that included *"singing, music, verbal sounds, and dialogue, as well as excessive movements from room to room that sounded like they were moving furniture."* The witness' letter states that on January 18, 2015, *"another party type evening occurred"* with *"partying noises that sounded like stomping and furniture being dragged around."* The letter makes reference to the witness being able to hear an argument

between the upstairs co-tenants at 7:00 a.m. and the sound of the tenants' bathroom fan continuously running at various times.

The witness testified that the clicking of the dog's feet as it moves from room to room can be heard in the lower suite. The witness stated that, when the tenants first moved in, they could hear the rattling of a gate that the tenants had apparently lodged in a doorway of two rooms to block the dog's access. The tenant stated that the rattling of the dog pushing against the barrier significantly interfered with their quiet enjoyment. The witness stated that the barking and whining of the dog would be considered as an unreasonable disturbance under the Act. In regard to the allegation of noisy parties, the witness acknowledged that the conversations overheard at tenant's gatherings did not include boisterous yelling, swearing or fighting.

The tenants disagreed with the landlord's and the witness' testimony. The tenants testified that that they never unreasonably disturbed another occupant of the building. The tenants pointed out that that the building is not very sound-proof as acknowledged by the landlord in the warning letter of December 8, 2014.

The tenants testified that the problem is made even worse by the fact that their unit is not carpeted. The tenants testified that they also can hear other people and their dogs in other suites in the same building, as these residents engage in normal activities, because these kinds of sounds frequently travel from one suite to another in this particular building.

The tenants pointed out that the extent of the problem in the building is confirmed by the fact that the tenant below apparently finds the clicking of their small dog's toenails to be a contributing factor in regard to the alleged unreasonable disturbance, even though their dog is only 15 pounds in weight. The tenants testified that the fact that the witness admitted to being disturbed by a rattling baby-gate and the sound of their bathroom fan, that are clearly normal household activities, shows that the allegations of excessive noise have no basis.

With respect to the alleged parties, the tenants testified that they did not have parties, but only invited a couple of guests over for a visit, during which there were no raised voices nor loud music. The tenants denied that they smoked on the property.

The landlord confirmed that the floors are hardwood and do carry sounds, but pointed out that that there is an expectation that the tenant would place area carpets throughout the rental unit. The tenants argued that they had already placed runners in some areas and intended to add more carpets in future to absorb sounds.

The landlord stated that they had never received complaints about noises from any other suites and only received complaints about these tenants. The landlord acknowledged that they did not personally observe any incidents of unreasonable disturbance, but based their conclusion solely on reports, primarily from one other resident who lives below these tenants. However, the landlord pointed out that they also received other complaints that were not submitted into evidence because the complainants refused to come forward or put their concerns in writing.

The tenants pointed out that the landlord failed to submit any copies of the actual email complaints they referenced to justify the warning letters and instead only submitted what appears to be a single complaint letter apparently solicited from one resident after-the-fact. The tenants testified that the complaint letter dated January 29, 2015, used in evidence, was written *after* the tenant had already filed their application to dispute the 1 Month Notice to End Tenancy for Cause.

The landlord testified that the tenants' conduct had clearly significantly interfered with and unreasonably disturbed the other residents in the complex and stated that the tenants' application to cancel the 1 Month Notice to End Tenancy for Cause should be dismissed and an order of possession in favour of the landlord should be issued.

### **Analysis**

Section 28 of the Act protects each tenant's right to quiet enjoyment.

I accept that the resident below the tenant could genuinely hear the activities described. I find that the fact that something can be heard does not necessarily make it an unreasonable disturbance. I find that, to qualify as unreasonable, sounds must be of a magnitude that would deprive others of their right to quiet enjoyment under the Act.

With respect to the issue of excessive noise, I find that exposure to noise between units can depend upon the age and structure of the building in relation to how sound carries or what floor covering is used. The fact is that some complexes are more sound-resistant than others. I find that it has been acknowledged by all parties that this unit is prone to the transfer of sounds between units.

Moreover, I find that the term "*unreasonable disturbance*" is a subjective determination that widely varies from one individual to another. I note that the perception of what level of noise is "reasonable" can be influenced by the sensitivity or subjectivity of a particular occupant. Diversity of lifestyle or conflicting shift-work schedules may also be a factor.

Despite any possible deficiencies that may or may not exist in the infrastructure of the building or lifestyles, I find that conduct such as yelling, loud banging or high volume music played late at night, would likely be considered as a significant disturbance if they

occurred too frequently. However, I find that there is no proof that this was the case here.

In this instance, while I accept that the neighbouring occupant may have been bothered by the tenants' conversations, occasional audible sounds from their dog and the hum of their bathroom fan, I accept the tenants' testimony that these were likely the sounds of normal living and therefore would not qualify as unreasonable disturbance or significant interference of other residents.

The act entitles all residents, including these tenants, to enjoy their suite and the common areas as part of their tenancy.

I find that the landlord did not personally investigate the allegations about excessive noise and relied solely on reports from others, only one of whom submitted written testimony and appeared at the hearing.

Based on the evidence and testimony before me, I find that the landlord has not submitted sufficient proof to verify that this tenancy should be terminated for Cause.

Accordingly, I hereby order that the One Month Notice dated January 21, 2015 be cancelled and of no force or effect.

I find that the tenants are entitled to be reimbursed for the cost of this application in the amount of \$50.00 which may be deducted from the next rental payment owed to the landlord.

### **Conclusion**

The tenants are successful in the application and is granted an order cancelling the 1 Month Notice to End Tenancy for Cause.

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: February 11, 2015

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Residential Tenancy Branch

