



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Gateway Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, LAT, LRE, OLC, MNDC

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47;
2. A Monetary Order for compensation - Section 67;
3. An Order to allow a change of locks and to restrict the Landlord’s entry - Section 70; and
4. An Order that the Landlord comply with the Act - Section 62.

The Landlords and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Witnesses provided evidence under oath.

### Issue(s) to be Decided

Does the notice to end tenancy contain a valid reason?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the tenant entitled to the compensation sought?

Is the Tenant entitled to change the locks or restrict the Landlord’s entry?

### Background and Evidence

The tenancy started on April 15, 2015. Rent of \$900.00 is payable on the first day of each month. On February 15, 2016 the Landlord served the Tenant with a one month notice to end tenancy for cause (the “Notice”) by posting the Notice on the door.

The Landlord states that on one occasion near the onset of the tenancy the Tenant made a loud buzzing noise from the unit but that after speaking with he Tenant, this noise stopped. The Landlord states that other tenants have made complaints about loud noise coming from the Tenants' unit. The Landlord states that for each written letter of complaint there are at least 10 verbal complaints. The Landlord does not have any log or notations of the verbal complaints. The Landlord provided letters dated or in relation to events occurring prior to the issuance of the Notice from two tenants, one of whom has since moved. It is noted that one tenant refers to "loud chatting" and "sexual screaming", among other noises. A third tenant writes that "sometimes a girl shouts".

The Tenant provided witness evidence, both at the hearing and in documentary submissions, from tenants living above, below and adjoining the Tenants' unit, with the exception of the Caretaker's unit directly above the Tenants, indicating no noise from the Tenants' unit. The Tenant states that the Landlord must have other unknown reasons for wanting to end the tenancy. The Tenant states that the Landlord actively solicited written complaints from tenants who did not otherwise complain about noise.

The Tenant states that due to the Landlord's behavior they do not feel safe and want to both change the locks and restrict the Landlord's entry. The Tenant states that the Landlords have never entered the unit in the past without authority.

The Tenant states that the Caretaker lives above the Tenant's unit and has repeatedly made loud banging noises on the Tenant's ceiling. The Tenant states that the caretaker did not come to the Tenants' unit to ask the Tenants to be quiet and the Tenant did not know why the Caretaker was banging on its floor. The Tenant states that when the Caretaker was asked about the banging the Caretaker accused the Tenant of running a business out of the unit. The Tenant states that the Landlord's other Agent was informed about the noise from the Caretaker and that the Tenant was informed that the Caretaker was accidentally dropping weights on the floor. The Tenant states that the noise stopped when the Tenant received the Notice. The Tenant states that the

Landlord makes mysterious complaints about the Tenants such as “smells” from the Tenants’ unit. The Tenant claims \$100.00 for loss of quiet enjoyment. The Landlord states that the Tenant did not report any complaint about the Caretaker until about a week ago and that the matter was discussed with the Caretaker who no longer uses weights in the unit.

The Tenant states that he lost work income in order to deal with the tenancy and the dispute and claims compensation.

### Analysis

Section 47 of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. Although the Landlord has some witness evidence that suggests some noise coming from the Tenant’s unit, considering that there is no supporting evidence for verbal complaints and considering the Tenant’s witness evidence of no noise from several tenants, I find that the Landlord has not provided sufficient evidence to show on a balance of probabilities that the Tenants caused any significant interference or unreasonable disturbance. I find therefore that the Notice is not valid and that the Tenant is entitled to a cancellation of the Notice.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party. Accepting the Landlord’s persuasive evidence that the matter of the Tenant being disturbed by the Caretaker was only recently brought to the Landlord’s attention and was dealt with immediately I find that the Tenant has not shown that the Landlord failed to act. I dismiss the claim for compensation for loss

As the Landlord was within its right to serve the Tenant with the Notice, albeit an ultimately unsuccessful one, as there is no evidence that the Landlord has breached the Act by serving the Tenant with the Notice in bad faith or to harass the Tenant, and as the Act does not provide for compensation for having to participate in a dispute proceeding other than for recovery of the filing fee costs, I dismiss the Tenant's claims for compensation.

As there is no evidence that the Landlord has acted contrary to the Act or tenancy agreement in relation to entry into the Tenant's unit I find that the Tenant is not entitled to an order to either change the locks or restrict the landlord's entry any further than as restricted under the Act. I dismiss these claims.

#### Conclusion

The Notice is cancelled and of no effect. The tenancy continues. The Tenant's monetary claims are dismissed. The Tenant's claims for lock changes and entry restrictions are dismissed.

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: April 19, 2016

---

Residential Tenancy Branch