



# 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 an application by the tenant for an order setting aside a 1 Month Notice to End Tenancy for Cause.

The hearing was set for November 22. Both parties attended on that date. No issues regarding the exchange of evidence were identified. The parties were not able to complete their testimony in the time allotted for the hearing so it was continued on December 7, 2016, at 9:00 am, a date and time convenient to all participants.

On December 7 the landlord and two witnesses appeared at 9:00 am but the tenant did not. I waited ten minutes before starting the hearing. I heard both of the landlord's witnesses. After they completed their testimony they left. I was in the process of giving an oral decision when at 9:32 am the landlord said they had received a text message from the tenant saying she had been unable to join the call. The landlord sent the tenant the telephone number and the participant code to the tenant and I stopped the hearing. A few minutes later the tenant joined the conference call. She described the difficulties she had encountered.

I explained that I had already heard two witnesses and read her my notes of their testimony.

After that the tenant gave her testimony and the landlord gave its' rebuttal evidence.

The hearing concluded at 10:15 am. I reserved my decision.

### Issue(s) to be Decided

Does the landlord have cause, within the meaning of the *Residential Tenancy Act*, to end this tenancy?

### Background and Evidence

This month-to-month tenancy commenced April 1, 2015. As of April 1, 2016 the monthly rent, which is due on the first day of the month, is \$740.00.

The rental unit is located on the ground floor of a four story building. The building dates from 1989. It is frame construction with two inch concrete floors on each level. The walls between the units were constructed in a manner designed to limit sound transference. None of the units have air conditioning.

The building is one of three located on this property. The building in which the tenant's unit is located faces a large green space commonly referred to as "the courtyard". There is a second building on the other side of the courtyard that also faces the park area. A third building is located behind the other two. It faces a parking lot and is more removed from the courtyard area.

Located in the green space are a BBQ area, two duck ponds, a garden area and lots of trees. BBQs are not permitted on the balconies which is why the common BBQ area is provided as a place to cook, but not to stay and socialize. There is a separate smoking area, away from the courtyard.

The landlord described the tenant profile as mostly older adults and some families.

The tenancy agreement specifically provides that quiet time starts at 10:00 pm. Attached to the tenancy agreement are Rules and Regulations for the complex. These include:

- All tenants will be respectful of their neighbours.
- Quiet time between 10:00 pm to 9:00 pm.
- Excessive loud conversations on balconies and common areas to be avoided.
- Absolutely no drunk and disorderly behaviour on the grounds at any time.
- Loud arguments and vulgar language being heard anywhere in the common areas while not be tolerated, keep your voices at a respectable level while inside or outside of your apartment.

Over the course of the past summer the landlord received many complaints about the tenant. The landlord said that this was a change from the previous year when they had only received one.

The landlord wrote the tenant warning letters on August 2, August 22 and September 22. The first letter listed a variety of complaints that had been received but the next two only addressed noise. The last letter states that several tenants of the complex have said they were considering moving away because of the disturbances and goes on to state that "we cannot risk a catastrophic loss of business by losing as many as 4 other tenants based on disturbances coming from your apartment." The landlord also spoke to the tenant about the complaints and had text message exchanges with her on the topic.

The landlord said that some of the tenants who complaining were long term residents of the complex and none of them have ever complained about a neighbour before.

MW has lived in this complex for 17 years. He is 70 years old and retired. He lives in a unit across the courtyard from the tenant. He has never met the tenant or had any personal interaction with her.

He sent the landlord e-mails complaining about noise at 11:23 on July 10; at 11:35 pm on August 1; and at 11:37 am on August 20. The first two e-mails were sent as the noise was happening. The second e-mail described the noise as "over the top".

He testified that the complex is normally very quiet after 10:00 pm and that sound really carries at night.

The witness said he didn't get too upset until August 19. That night he had to close the doors and windows when he went to bed just before midnight because of the noise. MW also said that it was clear that it was a really good party with lots of alcohol. The next day the noise started again at 11:30am. He went away for the day and when he returned at 11:30 pm the same people were still being loud.

MW said that the noisy neighbour and her company had ruined the summer for him.

GP has lived in this complex, off and on, for about 16 years. He is 60 years old and this was his first summer of retirement. He lives in the same building as MW.

GP testified that the person making all the noise has a very distinctive and booming voice. He described the daytime noise as talking on the telephone and visiting and the nighttime noise as occasional parties. He said that the noise was so disturbing he had to shut his windows and doors; sometimes he just went away because the noise was so distressing to him. At night he would take a sleeping pill to go to sleep. He said he contemplated moving away even though he loves this complex.

The witness said he put up with the noise as long as he could before he complained to the landlord; which he did on July 25, August 2 and August 22. His August 2 letter says: "Yesterday (Aug 1<sup>st</sup>) on Monday, they were at it all day and night, non-stop. They're in the bottom corner suite (concrete patio). She has people over every day. She obviously doesn't work. It's driving me nuts. Everything was so quiet before she moved in. I can't confront her, cause I'll flip out and it would get ugly."

In his testimony GP stressed that he was disturbed every single day. This was another witness who said his summer was ruined by the noise.

DT testified after GP. He lives in the same building as MW and GP. He reiterated everything GP said by adding that the loud conversations were full of obscenities. He said the noise was all day, every day. He also described the person as having a very distinctive voice.

DT was very upset when he testified. He said that the noisy neighbour really spoiled the use of the park area this summer and that this was the worst disturbance he had experienced in four years of residency. He testified that if this tenant is not evicted he's moving and that many of his neighbours are saying the same thing.

The landlord filed a letter from MV, an elderly lady who lives two floors above the tenant. On July 25 MV gave the landlord a letter of complaint. She said she heard "the lady on the bottom floor end suite" at 12:00 and 12:30. She also stated that this was "not the first time as she had numerous groups of people by the duck pond". This tenant has since moved out of the complex. She told the landlord it was because of the noise.

RC who lives directly above the tenant testified. She has lived in her unit since April 1, 2-16. She lives there with her two teenage daughters. She described the tenant as having a very distinctive voice.

RC described an incident when the tenant, her son and her daughter-in-law came to her door to complain about the noise from her unit. The conversation ended with the tenant getting very angry and yelling and swearing at her. The witness could not recall if she complained to the landlord on that occasion.

RC said that over the summer there were lots of parties at the tenant's unit, usually on weekends and holidays. The parties lasted two or three days.

On August 18 she delivered a complaint letter to the landlord. In her letter she specifically mentions the incident of June 28 plus parties on Canada Day and BC Day.

RC testified about the events of September 17, 18 and 19. ON September 17 there was loud music from the tenant's unit at about 9:00 pm. On the afternoon of September 18 someone pounded on the ceiling. Late at night on August 19 she could hear someone talking loudly about her in vulgar terms.

RC said that everyone else in the complex respects the quiet time.

The property manager testified that RC is normally very calm but she was very upset when she dropped off the letter in August. The final complain in September was what impelled the landlord to issue and serve the tenant with a 1 Month Notice to End Tenancy for Cause. The sole reason on the notice was that the tenant, or a person permitted on the property by the tenant, had significantly interfered with or unreasonably disturbed another occupant or the landlord.

Many of the witnesses said that they had thought about calling the police but, for one reason or another, none did. Many of the witnesses mentioned that this was a very hot summer and closing the windows and doors made their units uncomfortable.

The resident manager testified that she lives on-site. She keeps office hours of 9:00 am to 5:30 pm. Her unit is at the back of the building furthest from the duck pond so she cannot hear anything that goes on in the courtyard from her home.

She testified that she spoke to the tenants several times about the noise complaints. The tenant express disappointment that people were complaining about her or her family; concern that she was being targeted; and denial that she was doing anything wrong. She asked the resident manager "Aren't I allowed to have company?"

The resident manager testified that the tenant has a very loud voice that carries through the complex.

All witnesses said that since the arrival of cooler weather and the service of the notice to end tenancy, the noise had been reduced.

The tenant testified that she is a nurse who works eight hour shifts. She works full-time at one place and part-time at another. She shares the unit with her son. She also has two small grandchildren who visit her.

The tenant said that they did not use the pond area that much. When they used the BBQ they took their food inside the unit to eat. She described the pond area as well used and said that sound does carry through the space. She also said that noise does not have to be very loud to carry there. She said that other groups use that area and those groups can also be heard.

She said that RC is noisy all the time; she has complained to the landlord about this; and the landlord has not done anything about the situation. She also said that when she comes home at night after work she can hear loud music in her hallway so the building is not as quiet as described by the landlord or the witnesses. She also complained about the smell of marijuana in the building every day. This is also something she has complained to the landlord about and they do not appear to have done anything.

The tenant expressed the view that the landlord should have come over when the alleged events were occurring to investigate for themselves. The tenant said that on some of the dates mentioned she was not even home. She mentioned August 20 and 21 as days when she was away at her boyfriend's home. In this way they would have seen that on some occasions she was not home on those dates. She did not think it was right that the complaints were not brought to her attention some time after the fact.

The tenant testified that she did not think there was any noise from her unit after 10:00 pm.

Finally, she said she felt she was being targeted and blamed for all the noise in the courtyard.

### Analysis

The only issue here is noise.

The tenant described the landlord's evidence as "overwhelming". That is an accurate word. I have been doing this work for many years and it is not that often that so many neighbours will testify in a hearing.

There was no indication that the witnesses knew each other or had colluded in any way.

The tenant said that she was not at home on many of the dates mentioned by the witnesses. There was great consistency in the dates mentioned by the witnesses and this information was known to the tenant in advance of the hearing. However, she did not file any evidence at this hearing to show that she was at work or at her boyfriend's place on any of those dates, even though that could easily have been done. Further, even if she was away but her son or other family members were in the unit and making noise she is responsible for their behaviour.

This is not a situation where the source of the noise cannot be identified. Several witnesses specifically described the location of her unit and all witnesses described the tenant's voice as distinctive. Having heard the tenant myself, I agree with that description.

I find that the tenant and or the people she permitted on the property have significantly interfered with or unreasonably disturbed other occupants of the complex and the landlord has established the ground stated on the notice to end tenancy. The tenant's application is dismissed.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and:

- the notice to end tenancy complies with section 52; and,
- the application is dismissed or the notice to end tenancy is upheld;

the arbitrator must grant an order of possession of the rental unit to the landlord.

In this case the tenant's application has been dismissed and the notice to end tenancy complies with section 52, therefore, I grant the landlord an order of possession. The rent has been paid to the end of December therefore the effective date of the order of possession will be December 31, 2016.

### Conclusion

- a. The tenant's application is dismissed.

- b. An order of possession effective 1:00, December 31, 2016 has been granted to the landlord. If necessary, this order may be filed with the Supreme Court and enforced as an order of that court.

*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 15, 2016

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Residential Tenancy Branch