



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for the following orders:

The Tenant applied for:

1. An Order cancelling a notice to end tenancy - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Witnesses were excluded from the hearing until they were called to give evidence and they gave evidence under oath.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

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

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Are the Parties entitled to recovery of their filing fees?

### Background and Evidence

The tenancy started on September 16, 2007. Rent of \$730.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$350.00 as a security deposit. Rent for June 2017 has been paid. On April 18, 2017 the Landlord served the Tenant with a one month notice to end tenancy for cause (the "Notice"). The reason for the Notice as set out on the second page is that the Tenant has significantly interfered with or unreasonably disturbed another occupant or has seriously jeopardized the health, safety or physical well-being of another occupant.

The Landlord states the Tenant's neighbour has complained that since approximately a year ago the Tenant has been disturbing the neighbour by making considerable noise with machinery and tools until 11:00 p.m. at night. The Landlord states that the municipal noise bylaw restricts noise after 9:00 p.m. The Landlord states that the Tenant was sent a letter about this behavior a year ago and that the Landlord has since had more complaints from the Tenant's neighbour. The Landlord states that she did not speak to the Tenant about any complaints since last year. The Landlord states that the neighbour's tenancy started about 12 years ago with only some on and off troubles between the Tenant and the neighbour until last year. The Landlord states that the Tenant has complained about the neighbour's use of dryer sheets and about the neighbour's smoking and that the Landlord spoke to the neighbour about this. The Landlord states that the Tenant has not otherwise complained about the neighbour.

The Landlord's Witness, the neighbour of the Tenant and the person who has complained about the Tenant's behavior, (the "Neighbour") states since the problems in August 2016 and from December to recent the Tenant has been slamming her door almost daily at least once a day. The Neighbour states that the Tenant has also been hammering inside the unit about twice a month between the hours of 2:00 a.m. and 4:00 a.m. The Neighbour states that the Tenant has intentionally placed "creepy" lawn ornaments on her front door and has positioned them to peer into the Neighbour's property. The Neighbour states that for a couple of months over the winter the Tenant placed a video camera in her living room window to point directly at the Neighbour's

driveway. The Neighbour states that this is disturbing as the Tenant can see the Neighbour or her guests coming and going and that this breaches her right to privacy. The Neighbour states that this camera is no longer an issue.

The Neighbour states that last year the Tenant assaulted her by grabbing her arm while yelling and screaming. The Neighbour states that this was reported to the police but that the Neighbour did not want to press charges as the Witness complained to the Landlord instead. The Neighbour states that there have been no threats or assaults since.

The Neighbour states that the Tenant bangs on the fence constantly in the middle of the afternoon or early evenings and that this disturbs the Neighbour's dog who then barks. The Neighbour states that this behavior occurs primarily in the spring and summer. The Neighbour states that the Tenant uses saws, sanders, grinders and hammers for hours from the late afternoon to the early evening disturbing the Neighbour's enjoyment of the outside. The Neighbour states that whenever the Neighbour is outside the Tenant will do whatever she can to disturb the Neighbour. The Neighbour states that for example if the Neighbour mows the lawn then that night something will happen like hammering between 2:00 a.m. and 4:00 a.m.

The Neighbour states that she is not saying how this affects her. The Neighbour also states that she has P.T.S.D. and that the Tenant's behavior "swings her in a bad direction", leaving her feeling unsafe. The Neighbour states that despite the disturbance no move has been considered. The Neighbour states that she has made three complaints to the Landlord: twice from the summer of 2016 and once in March 2017. The Neighbour states that there used to be a decent relationship between her and the Tenant with the Witness on occasion borrowing from the Tenant but that this stopped a year ago. The Neighbour states that for a short period of time she did accept meds that were offered to her from the Tenant but that this changed after the Tenant found more lucrative ways of using the meds.

The Tenant states that the noise in relation to the fence came from the Tenant's work for 15 minutes on one occasion several months ago to repair the fence that was falling apart. The Tenant states that this did cause the Neighbour's dog to bark but that the Witness never said anything to the Tenant. The Tenant denies making noise in the middle of the night other than usual living noises when she cannot sleep. The Tenant states that she builds furniture for a living and that she does her work with tools outside beside a brick wall for noise reduction and only until 9:00 p.m. The Tenant states that the noise bylaw starts at 10:00 p.m. The Tenant denies assaulting the Neighbour and states that no police has ever come by. The Tenant states that while they were still friends, the Tenant did once put her hand on the Neighbour's arm to stop her from falling when the Neighbour was drunk. The Tenant states that the Neighbour is an alcoholic and that the Tenant has helped her out in several ways such as mowing both her lawn. The Tenant states that she stopped doing this last summer when she discovered that the Neighbour had her own lawn mower.

The Tenant states that she did have a video camera pointed towards her own driveway and car as the Tenant had experienced a couple of break-ins. The Tenant states that the camera actually didn't work and that it, along with a warning sign of being on video, was used just a deterrent for break-ins. The Tenant states that she never uses the saw or hammer in her house. The Tenant states that she never works with any tool that makes noise inside her unit and never overnight.

The Tenant's Witness (the "Friend") states that she has known the Tenant for approximately two years and has frequently spent time at the Tenant's home, including overnight stays. The Friend states that she has never experienced the Tenant using tools inside the unit or overnight. The Friend states that the Tenant is a very compassionate and caring person and that the Tenant was seen to be very giving towards the neighbour. The Friend states that this generosity was to the extent that the Tenant would at times do without certain foods in order to provide it to her neighbour. The Friend states that about a year ago she told the Tenant that she was being used and exploited by the Neighbour. The Friend states that she started to urge the Tenant

to pull back with her generosity. The Friend states that she now feels bad about that advice as it has led to the Tenant being faced with eviction. The Friend states that the Tenant has suffered from extreme stress since this time and now has a bad rash with open sores all over her body.

The Landlord states that although she did not speak to the Tenant about the recent complaints made by the Neighbour, the complaints were heartfelt and the Tenant's behavior has not changed since last summer

### Analysis

Where a notice to end tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid.

I find the Neighbour's evidence of being disturbed by lawn ornaments to be an exaggeration. I consider the neighbour's evidence of reporting an assault to the police to be somewhat suspect as I accept the Tenant's evidence that no police officer ever came to speak with her about the incident. As any person passing by the unit can see the neighbour's car and driveway, I cannot accept that a video camera that was taken down after a short period of time nearly a year ago could be either an invasion of privacy or a continuing and unreasonable disturbance. The evidence shows that the Neighbour and the Tenant had a reasonably good relationship until a year ago when according to the Tenant's witness the Tenant started to pull back with her generosity. There is no evidence that the Tenant's building of furniture outdoors or her activity indoors ever bothered the Neighbour before that time. While the Neighbour states that the noise affects her P.T.S.D. there is no medical documentation to support a worsening of the Neighbour's condition from any act of the Tenant. Further there is no evidence that the Tenant was aware of the neighbour's P.T.S.D and was purposely creating triggers. Overall I consider the Neighbour's evidence of disturbance to be exaggerated or distorted and that the complaints to the Landlord, however heartfelt, were more likely

made in response to the Tenant withdrawing as a friend and helper. As a result I find on a balance of probabilities that the Landlord has not substantiated that the Tenant significantly interfered with, unreasonably disturbed or seriously jeopardized anybody or anything. The Tenant is therefore entitled to a cancellation of the Notice and the tenancy continues. As there is no evidence of unpaid rent I dismiss this claim. As the Landlord's claims have not had merit I decline to grant recovery of the filing fee and in effect the application is dismissed.

As the Tenant's application has been successful I find that the Tenant is entitled to recovery of the filing fee and the Tenant may deduct \$100.00 from future rent payable in full satisfaction of that claim.

#### Conclusion

The Notice is not valid and is cancelled. The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims 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: June 09, 2017

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Residential Tenancy Branch