



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, CNC, MNDC, FF

### Introduction

This was a cross-application hearing for Dispute Resolution. The matter was set for a conference call hearing.

On May 3, 2017, the Landlords applied requesting an order of possession based on issuance of a 1 Month Notice To End Tenancy For Cause dated April 23, 2017, and to recover the cost of the application fee.

On April 28, 2017, the Tenants applied to cancel a 1 Month Notice To End Tenancy For Cause, for compensation, and to recover the cost of the filing fee. On May 17, 2017, the Tenants amended their application to include a monetary claim of \$2,500.00 for punitive damages and compensation for stress and anxiety.

Both parties were present at the hearing. The Tenants were assisted by legal counsel. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The hearing on June 5, 2017, was adjourned to allow more time for the parties to provide their testimony and respond.

The Landlords testified that they withdraw the 1 Month Notice to End Tenancy dated May 3, 2017, as they indicate it was issued in error, on an old form.

The hearing proceeded based on the issuance of a 1 Month Notice To End Tenancy For Cause dated April 23, 2017, ("the 1 Month Notice")

The parties were offered an opportunity to settle the matter pursuant to section 63 of the Act; however, a settlement agreement could not be reached.

### Issues to be Decided

- Does the Landlord have sufficient cause to end the tenancy?
- Are the Tenants entitled to compensation?
- Are the parties entitled to recover the cost of the filing fee?

### Background and Evidence

The parties testified that the tenancy commenced on October 1, 2016. Rent in the amount of \$1,150.00 is due on the first day of each month. The Tenants paid a security deposit of \$575.00 to the Landlord.

The Landlord testified that they have received noise complaints about the Tenants from other occupants of the rental property. The complaints indicate that the Tenants are making strange noises, and are responsible for banging on the floor.

The Landlords provided copies of written complaints that the Landlords received from other occupants of the property.

The Landlord provided a letter from an occupant at the rental property dated April 21, 2017, that indicates that over the last several months there has been constant noise and loud noise coming from the apartment above her bedroom.

The Landlord provided a letter from an occupant at the rental property dated April 26, 2017, that indicates the occupant had been woken up with strange noises in the middle of the night. The letter did not provide exact times or dates.

A witness for the Landlord, Ms. M.M. provided affirmed testimony. She submitted that on May 13, 2017, around 7:30 pm she attended the Tenants' unit to explain that she

was being disturbed by noise that wake her at night. She testified that there was no yelling or screaming.

The Landlord testified that they consider the Notice to End Tenancy dated May 13, 2017, to be a written warning letter to the Tenants.

The Landlords submitted that they have a duty to protect the quiet peaceful enjoyment of other Tenants. The Landlord testified that the Tenants were served with a 1 Month Notice To End Tenancy. The reason for ending the tenancy within the 1 Month Notice is:

*Tenant or a person permitted on the property by the Tenant has:*

- *Significantly interfered with or unreasonably disturbed another occupant or the Landlord.*

The 1 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. The Tenants disputed the 1 Month Notice within the required timeframe.

With respect to the Tenants' claim for compensation, the Landlord submitted that the Tenants' claim is retaliatory in nature. The Landlord submitted that the Tenants' claim is punitive and according to the Residential Tenancy Branch Policy Guideline # 16 Claims in Damages, there is no authority to award punitive damages.

In response to the Landlord testimony, the Tenant B.L. testified that the rental unit is a one room studio apartment with old wood floors. He submitted that they have taken steps to be quiet by not watching television or listening to music past 10 pm. The Tenant, B.L. testified that he does not open the sliding glass door at night and that he is in bed by 11 pm.

The Tenants submitted that, other than the day they moved into the unit, they received no complaints until they were made aware of complaints on April 21 2017. They submitted that a notice to end tenancy was issued to them 2 days later.

The Tenants submitted that they wrote a letter to the Landlord dated April 23, 2017, in response to what they state are the Landlord's attempts to intimidate them and harass them into leaving the rental unit. The Tenants then received the 1 Month Notice. They submitted that the Landlords never gave any opportunity to them to work things out.

The Tenants submitted that on May 13, 2017, they had guests over for dinner. They submitted that there was knock on their door. They submitted that the Landlord and another occupant were at the door, stating there was banging on the floor. The Landlord served the Tenants with the 1 Month Notice that was later withdrawn. The Tenant A.R. spoke up to say they were not doing anything wrong as they are allowed to have visitors until 10:00 pm.

The Tenants provided a copy of an email dated May 15, 2017, from C.F. who indicates she was present in the rental unit visiting with her husband and daughter and having dinner, when the Landlord knocked on the door. The email indicates there were two women at the door intensively yelling and screaming at the Tenants.

The Tenants submitted that the tenancy agreement indicates the quiet time is from 10 pm until 9 am.

The Tenants submitted that they did not receive any written warnings about noise prior to receiving the 1 Month Notice. They submitted that the only verbal warning they ever received was on April 21, 2017.

The Tenant B.L. pointed out there is contradictory evidence submitted by the Landlord. The Tenant submitted that one occupant indicates the Tenants were quiet on May 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup>. The other occupant M. M indicates that there was noise on May 4<sup>th</sup>, and 5<sup>th</sup>. The Tenants submitted that the M.M's descriptions are exaggerated.

The Tenants also submitted that they were at a family member's house and not in their unit on April 24, 2017.

The Tenants submitted that the occupant of unit #102 does not live directly above or below them.

The Tenants submitted that the letter dated April 26, 2017, does not indicate that the noise was coming from their unit. They submitted that the complainant does not reside above or below them. They submitted that the loud banging is not coming from them.

The Tenants submitted that they have three heaters, and one is an older hot water heater that makes noise when it turns on and off. The Tenants provided a record of dates and times that they have heard noises, including noise from the heater.

The Tenant B.L. testified that they were absent from the rental unit from April 21-25th, and May 13 -20<sup>th</sup>.

The Tenant B.L. testified that A.R. has an anxiety disorder and was not able to testify. The Tenant B.L. read a statement from A.R. He submitted that A.R. was horrified that the Landlord threatened to investigate her mental illness. He submitted that A.R. has had panic attacks and flashbacks related to the incident that occurred on May 13, 2017.

The Tenants counsel, Mr. R.T. submitted that the Landlord has to provide clear evidence of disturbance prior to the date the 1 Month Notice was issued. He submitted that a lot of the Landlords evidence is related to incidents that allegedly occurred after the 1 Month Notice was issued. He submitted that the Landlords' evidence is contradictory and does not clearly identify where the noise comes from.

Mr. R.T. submitted that the Landlord was acting aggressive towards the Tenants rather than investigating the complaints in a balanced manner. Mr. R.T. submitted that for this reason, a monetary award for the Tenants should be considered.

In response, the Landlord testified that there was a noise complaint on the first night the Tenants moved into the rental property. The Landlord submitted that the relationship between the parties is broken.

The Landlord submitted that the Tenants must not cause or allow loud conversation or noise to disturb the quiet enjoyment of another occupant of the property at any time. The Landlord requests an order of possession for the rental unit.

### Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Branch Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

*An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.*

### 1 Month Notice

In the matter before me, the Landlord has the burden to prove that the reason to end the tenancy in the 1 Month Notice is valid. The Landlord submitted that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

Based on the evidence and testimony of the parties before me, and on a balance of probabilities, I make the following findings:

I find that the Landlord did not provide the Tenant with a written warning prior to issuing the 1 Month Notice. I assign very little weight to the complaint the Tenants received on the day they moved into the rental unit. This first complaint occurred almost 7 months prior to the next documented complaint on April 21, 2017.

I find that the Landlord's evidence is comprised of complaints that appear to have been submitted to the Landlord by occupants after the Landlord issued the 1 Month Notice on April 23, 2017. One complaint is dated April 26, 2017, and the other letter is dated April 20, 2017 but appears to have been written later. Both complaints do not specifically identify that the Tenants are the source of the disturbances.

The majority of the Landlord's other evidence is comprised of complaints from incidents that occurred after the issuance of the 1 Month Notice. I find that some of the Landlords' evidence is contradictory which causes me to doubt its reliability. On some dates, one occupant indicates the Tenants were quiet, and another occupant indicates the Tenants were noisy. Some evidence indicates there was noise on April 24, 2017, when the Tenants testified they were not home.

I have also considered that the rental unit is an older building with wooden floors. I find that it is reasonable that an occupant should expect to hear some noise in normal day to day living in an older multi-unit building with wood floors.

The notice to end tenancy that the Landlord considers to be a written warning was issued to the Tenants after the Landlords issued the 1 Month Notice on April 23, 2017. I

find that it does not serve to be an effective warning about noise; because it was issued after the 1 Month Notice was already served.

In the circumstances, I find that if the Landlord wants to end the tenancy for a breach of a material term of the tenancy regarding the disturbance of another occupant, the Landlord should issue a written warning to the Tenants pointing out the problem and seeking to remedy the complaints.

I find that the Landlord has provided insufficient evidence to support issuing the 1 Month Notice to End Tenancy dated April 23, 2017, due to the Tenants ***significantly interfering with or unreasonably disturbing*** another occupant or the Landlord. Therefore, I cancel the 1 Month Notice to End Tenancy for Cause, dated April 23, 2017. (My emphasis)

The Landlords' application for an order of possession and to recover the filing fee is dismissed.

I order the tenancy to continue until ended in accordance with the Act.

### Monetary Claim

I find that the Landlord has a right to issue a notice to end tenancy and that the Landlords' actions of issuing two notices to end tenancy were not egregious. I do not find that the cumulative result of the Landlord's actions has created a loss of quiet enjoyment to the Tenants.

The request for compensation of \$2,500.00 appears to be punitive and more in line with an administrative penalty under the *Act*. I do not have the authority to adjudicate administrative penalties. The dispute resolution process is not the mechanism for seeking administrative penalties. The Tenants should call the Residential Tenancy Branch and speak with an Information Officer if they want to pursue an administrative penalty.

The Tenants' claim for compensation in the amount of \$2,500.00 is dismissed.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenants were successful with their application to set aside the 1 Month Notice. I authorize the Tenants to deduct the amount of \$100.00 from one future rent payment.

Conclusion

The Tenant's application is successful. The 1 Month Notice issued by the Landlord dated April 23, 2017, is cancelled.

The tenancy will continue until ended in accordance with the Act.

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 28, 2017

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Residential Tenancy Branch