



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated June 1, 2017 and received June 3.

The Notice alleges that the tenant has been repeatedly late paying rent, that his conduct has significantly interfered with or unreasonably disturbed other occupants and that he has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

Substantiation of any of these three grounds is just cause for ending a tenancy under s.47 of the *Residential Tenancy Act* (the “Act”).

At the start of the hearing the tenant noted that he was on a borrowed telephone and that it was almost out of charge. He indicated that the telephone he initially planned to use for the hearing was located in premises that were closed at the hearing time.

It is a party’s responsibility to attend the hearing and to make arrangements necessary to permit attendance by telephone for telephone hearings.

On the balance of convenience it was determined that the hearing would proceed. If the landlord’s Notice was justified it would be unfair to require her to wait weeks, possibly a month or more, in order to have the hearing rescheduled.

At the start of the hearing the tenant also requested an adjournment to retain legal counsel. The adjournment request was denied. The tenant made his application June 13, 2017. He has adequate time to retain counsel.

The hearing proceeded but the tenant dropped out of the hearing immediately once the landlord began her testimony. The hearing paused for ten minutes to permit the tenant to reconnect but he did not return. The hearing proceeded in his absence.

The landlord testified. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant has given cause for eviction under any of the three grounds alleged in the Notice?

Background and Evidence

The rental unit is one of two bedrooms in a basement suite in the landlord's house. The other bedroom is rented to a separate tenant who shares a kitchen and washroom with the tenant.

This tenancy started on June 1, 2014. There is no written tenancy agreement. The monthly rent is \$425.00, due on the first of each month. It is usually paid to the landlord directly from the welfare office on the tenant's behalf. The landlord holds a \$212.50 security deposit.

It was noted that though the landlord claims the tenant's rent is repeatedly late, she has not provided any particulars of late rent payment, such as dates or amounts. In the absence of such detail it is not possible for the tenant to mount any coherent defence to the allegation and for that reason repeated late payment of rent cannot be maintained as a ground for eviction. That portion of the Notice I hold to be unmaintainable.

Similarly, the landlord has not, either in the Notice or in any evidence provided to the tenant prior to the hearing, indicated the nature of the "illegal" activity alleged. Again, without such information the tenant cannot mount a coherent defence. That portion of the Notice is also determined to be unmaintainable.

The remaining ground for the Notice is that the tenant has significantly interfered with or unreasonably disturbed another occupant.

The landlord testifies that for a year and one half she has heard a "tapping" noise coming from the basement suite. She has concluded the tenant causes it because his cotenant is away at work when it occurs.

She says it lasts about an hour and then starts again. Sometimes, or at least on one occasion about a year it ago, it occurred in the evening. She says it occurs about every

second day. She has put a note about the noise under the door. The tenant denied he is the cause and has given her the extraordinary explanation that it is the police knocking on his window. The tapping noise softened after the note but later resumed its volume.

The landlord says she works nights and the tapping has disturbed her daytime sleep.

On occasion she has gone to the basement suite while the noise occurs. She says the tenant has refused to come to the door but the tapping noise stops.

The landlord provides the written, signed statements of her husband and her two sons regarding their experience with the tapping noise.

The statement of the landlord's husband Mr. R.R. indicates that he heard the tapping noise last summer at 7:45 in the morning when he was waking up. He banged his shoe on the floor and the noise stopped.

The statement of the landlord's eldest son Mr. S.R. indicates that he heard about the noise from his mother and his brother and then he heard the tapping noise too. He has gone to the tenant's door and the tenant has denied being responsible for the noise. The tenant has told him it was the police making the noise.

The statement of the landlord's youngest son Mr. A. R. indicates that he has heard the tapping noise, which he describes as "hammering." He works nights and sleeps during the day in a bedroom on the upper level of the landlord's home, two floors above the basement suite. He says the noise occurs almost every day and after his mother gave the downstairs tenants a note, the tapping noise was quieter.

The tenant filed a signed written statement claiming the tapping noise was from plumbing pipe noise or the other basement tenant putting together do-it-yourself furniture.

In his statement the tenant complains about: his roommate, a flood, illegal suite entry, an attempt at a wrongful eviction, missing mail, the bathroom fan, the need for a safety inspection and for a fire inspection. The tenant has not applied for relief in regard to any of these items and so I decline to consider them or to call on the landlord for a response.

### Analysis

The landlords have chosen to rent out the basement of their home. That space has now become the home of this tenant. He is entitled to create noise consonant with normal living. That day to day living sound could include, among many things the banging of pans in the kitchen, the noise of people conversing, the sound of television, practicing on a musical instrument (within reason).

The fact that some in the landlord's family work nights and sleep during the day is not a lawful ground for prohibiting the lower tenants from engaging in normal daytime activities in the home.

In this case the landlord's evidence about a "tapping" is simply too vague and undefined to permit the conclusion that it is a noise that exceeds the sounds of normal living or that it significantly interferes with or unreasonably disturbs other occupants.

I discount the evidence of Mr. A.R.. He describes a hammering noise heard two floors about the rental unit while the rest of his family describe a tapping noise heard on the level immediately above the rental unit. Mr. A.R. did not attend to provide details or an explanation about how the noise would appear to be louder though he heard it further away than the rest of his family.

### Conclusion

The landlord has failed to substantiate the grounds for the Notice. The Notice to End Tenancy dated June 1, 2017 is hereby set aside.

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: August 31, 2017

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Residential Tenancy Branch