



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            CNC, RP , LRE, FF, OPC

### Introduction

In the first application the tenant seeks to cancel a one month Notice to End Tenancy for cause served November 9, 2017. He also seeks a repair order regarding a sliding glass door and an order restricting the landlords' right of entry.

In the second application the landlords request an order of possession pursuant to the Notice.

It was determined that all the tenants' claims but for the request to cancel the Notice were claims unrelated to the cancellation application which has caused this hearing to be scheduled on a priority basis.

Rule 2.3 of the Rules of Procedure provides:

#### 2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

At the start of the hearing I determined that only the tenant's Notice cancellation request would be dealt with unless time permitted other matters. Time did not. As stated at hearing, all of the tenant's claims but for his request to cancel the Notice are dismissed with leave for him to re-apply.

All three parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. 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 this hearing show on a balance of probabilities that the tenant has given good cause for ending this tenancy under the grounds listed in the Notice?

### Background and Evidence

The rental unit is a one bedroom condominium apartment in a 109 unit, three level (plus parkade below) apartment building. The landlords are the owners of the rental unit.

There is a written tenancy agreement. It discloses that there were two tenants however it appears that the second tenant, a Ms. D. never moved in or if she did it was only for a short time.

The tenancy started in December 2015. It was originally for a fixed term but is now a month to month tenancy. The monthly rent, due on the first, is \$1000.00. The landlords hold a \$500.00 security deposit.

At the start of August 2017, the landlords received a letter from the strata property manager indicating that it had received complaints from a neighbouring unit stating:

They have reported sleepless nights due to:

- Loud, bass heavy music played all night with parties that start anywhere from 9 – 11 pm and run until the 6 – 7 am the next morning causing the resident to be woken up multiple times during the night.
- The parties occur weekly usually on a Saturday, but have taken place on Sunday night and on week nights.
- Loud, often intoxicated voices and shouting.
- Jumping up and down between 9pm and 7am.
- Bouncing and object or some other object on floor.

In addition, during the day these occupants have frequently:

- Talked loudly on their balcony including using a lot of obscenities.
- Played loud, bass heavy music during the day.
- Dropped cigarette butts onto deck below.

It was also reported that on two occasions a resident witnessed, a male jumping from XXX's (*unit # removed for privacy reasons*) balcony onto the first floor patio below and then jumped onto the ground level.

The landlords were out of the country until late September and did not approach the tenant about the letter until they called him September 29. They had discussed the matter with the letter's author on returning and were satisfied there was substance to it.

Their conversation with the tenant did not satisfy them. They issued the Notice in question on October 16, 2017. The Notice alleges that the tenant or a person permitted on the property by him has a) significantly interfered with or unreasonably disturbed another occupant or the landlord, or b) has seriously jeopardized the health, safety or lawful right of another occupant or the landlord, or c) has put the landlord's property at significant risk.

Proof of any of those grounds permits a landlord to end a tenancy under s. 47 of the *Residential Tenancy Act* (the "Act").

The parties agree there have been no reported incidents since the August letter.

The tenant denies the allegations but for the balcony reference. He admits that he descended from his balcony to the ground. He says he had to do so because his balcony door locks on its own when shut and on an occasion he was on the balcony a friend shut the door, locking the tenant out. His only solution was to climb onto the fence near his second floor balcony and down to the ground so that he could re-enter the building and thus his apartment.

The tenant also says the tenant below him was only there for two months so it was not possible for him to complain over six months as the August letter states.

In reply the landlords expressed their view that the occupant beneath this tenant had left because of him and so there have been no more complaints.

### Analysis

The ending of a tenancy is a very serious matter. A landlord purporting to do so must prove grounds by presenting clear and cogent evidence.

The landlords have put themselves at a distinct disadvantage at this hearing by relying on a mere letter from a property manager. That evidence is second hand evidence: the property manager reporting what was told to her. Such evidence, not under oath and not subject to clarification or probing by questioning and denied under oath by the tenant, is unreliable, of questionable weight and will not suffice to prove the grounds stated in a Notice to end a tenancy. It would be expected that the person(s) alleged to have been harmed or bothered would be called to give their evidence, to be sworn and to be subject to questioning.

In addition, the identity of the complainant(s) has not been revealed. A landlord is entitled to protect the identity of a complainant. Indeed, this adjudicative body will, itself, seek to ensure "informer privilege" in appropriate circumstances. However, when matters proceed to the adjudicative stage; to a dispute resolution hearing, and where a complainant's evidence is sole and decisive evidence, there is no anonymity. The tenant is entitled to challenge the accusations forming the basis of the eviction notice. He is entitled to know the particulars of the accusations and the source of the accusations to fairly mount any challenge to them. For that reason, the August letter, if admissible, is of no significant evidentiary weight.

For these reasons the Notice must be cancelled.

At the same time, this process should serve as fair warning to the tenant that had the complainant(s) testified at the hearing and were to be believed, his tenancy might have been in significant jeopardy.

### Conclusion

The tenant's application to cancel a one month Notice to End Tenancy dated October 16, 2017 is allowed. The Notice is cancelled.

The landlords' application for an order of possession is dismissed.

As the tenant has been successful, he is entitled to recover the \$100.00 filing fee paid for the application. I authorize the tenant to reduce his next rent due by \$100.00 in full satisfaction of the fee.

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: January 31, 2018

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Residential Tenancy Branch