



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were also given the opportunity to question each other and give submissions. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided by the parties has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reason for issuing it?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began about 2 years ago and the tenant still resides in the rental unit. Rent in the amount of \$1,070.00 per month is currently payable on the last day of the month in advance for the following month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant but does not recall the amount, and no pet damage deposit was collected. The rental unit is a furnished bachelor suite in a building containing 22 suites, and the landlord also resides on the rental property.

The landlord also testified that he personally served the tenant with a One Month Notice to End Tenancy for Cause, a copy of which has been provided for this hearing, but does

not recall exactly when. The landlord testified that it was served by himself personally to the tenant no later than the last day of the month. It is dated March 31, 2018 and contains an effective date of vacancy of April 30, 2018. The reason for issuing it states: "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord."

The landlord has talked to the tenant on a number of occasions about the excessive volume level of the tenant's TV and that other tenants, especially the tenant above and the tenant below the rental unit, are adversely affected by it. The neighbouring tenant in the apartment below was an international student who told the landlord that the tenant's TV was so loud it was interfering with his studies and that he'd written his concerns in a letter and slid it under the tenant's door. He later moved out on short notice to the landlord due to the continued disturbances.

A new tenant in the suite above asked the landlord to attend that unit to witness the level of noise, and they could hear all of the words on the tenant's TV below and no windows were open. It affects her quality of work.

The tenant's justification is hearing impairment, but the landlord told the tenant on several occasions that there are things to prevent disturbing others, such as headphones.

The landlord has provided 2 letters from other tenants as evidence, dated April 7 and April 17, 2018, and testified that the landlord received multiple complaints in January and another complaint was received from a tenant on April 2, 2018. The landlord wrote to the tenant in January, 2018 about disturbances to others. That letter has also been provided for this hearing, and the landlord testified that the tenant has not taken any action even up to last night. The tenant agreed to keep the volume at a specific numbered level, but did not reduce the volume.

**The tenant** testified that it's not as serious as the landlord is making it out to be and the tenant is cooperating to mitigate the effects by reducing the volume. The tenant does not watch TV during the day, but only between 8:00 p.m. and 11:00 p.m., and the quiet hours for the building start at 11:00 p.m. No one has come to the tenant's door to complain and there have been no police complaints. The tenant has asked neighbours to not hesitate to let her know if the TV is too loud. If it were such a problem, the tenant would imagine a lot of conflicts with others, and there are none.

In January, 2018 the landlord said there were multiple complaints, and the tenant asked what they were but the landlord really didn't answer that. However, the landlord then gave the tenant a letter stating that if there is one more complaint, he'd give a notice to

end the tenancy. The tenant never got any complaints, and the letters provided by the landlord are dated after the notice to end the tenancy was issued.

The tenant agreed that she would reduce the number level on the volume of her TV, which is a maximum number of 100, and reduced it from 80 to 65.

The tenant denies receiving a letter under her door from another tenant, but agrees that the landlord has knocked on her door a few times asking to turn down the volume due to complaints.

### **Landlord's Submissions:**

The tenant has been approached on numerous occasions and hasn't taken any measures to ensure comfort of those above and below her and has no intention of doing so. Tenants are hesitant to talk to others about noise complaints; they speak to the landlord, and that's what occurred.

### **Tenant's Submissions:**

The tenant has tried to mitigate and the noise the landlord refers to is only substantiated by one complaint. The impact is not as severe as the landlord says and he hasn't provided evidence that neighbours are severely impacted. The tenant would have expected a log of such complaints.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, I have reviewed the One Month Notice to End Tenancy for Cause (the Notice), and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute.

The landlord's position is that other tenants in the building are disturbed by the volume level of the tenant's TV and the tenant has no intention of complying. The tenant disputes that it's as severe as the landlord testified.

I have reviewed the evidence, and I accept the testimony of the landlord; the letter he gave to the tenant in January, 2018 speaks for itself, and it is not disputed by the tenant. The tenant has been warned verbally on several occasions, and may have reduced the volume somewhat, but clearly not enough. I agree with the landlord, the tenant takes

no responsibility and has no intention of doing so. Therefore, I dismiss the tenant's application.

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that the One Month Notice to End Tenancy for Cause is in the approved form, I grant an Order of Possession in favour of the landlord.

The landlord testified that the Notice was personally served to the tenant no later than the last day of March, 2018, and the notation on the bottom of the first page states that it was served in person on March 31, 2018. The *Residential Tenancy Act* states that such a notice must be served before the date rent is payable, and the landlord testified that rent is payable on the last day of the month. Therefore, I find that the effective date of vacancy is changed to the nearest date that complies with the *Act*, which is May 31, 2018.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on May 31, 2018. This order is final and binding and may be enforced.

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: May 02, 2018

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Residential Tenancy Branch