



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on April 26, 2018 (the "Application"). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated April 11, 2018 (the "Notice").

The Tenant appeared at the hearing. The Property Manager appeared at the hearing for the Landlord. The hearing process was explained to the parties and neither had questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. Neither party raised any issues in this regard.

Both parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence submitted and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

### Issue to be Decided

1. Should the Notice be cancelled?

### Background and Evidence

A written tenancy agreement was submitted as evidence and both parties agreed it is accurate. The agreement is between the Landlord and Tenant regarding the rental unit. The tenancy started June 1, 2015 and was for a fixed term ending November 30, 2015.

The tenancy was then extended until November 30, 2016. The parties agreed the tenancy is now month-to-month.

The Notice was submitted as evidence. The grounds for the Notice are 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”, “seriously jeopardized the health or safety or lawful right of another occupant or the landlord” and “put the landlord’s property at significant risk”.

Both parties agreed the Property Manager hand delivered the Notice to the Tenant on April 12, 2018.

An issue arose regarding whether the Tenant filed and completed the Application within the time limit set out in the *Residential Tenancy Act* (the “Act”) which I will not detail here given my decision not to cancel the Notice.

In relation to the grounds for the Notice, the Property Manager testified that several complaints had been received through the strata. He said the Landlord followed up on the complaints with the Tenant and that the Tenant was responsive each time. He testified that the owner of the rental unit was fined and at that point the owner had had enough and asked the Landlord to evict the Tenant. He said the Tenant paid the fine.

The Property Manager relied on the documentary evidence submitted outlining the complaints. I have reviewed this evidence. It includes numerous complaints regarding several issues; however, the following is an outline of the complaints I find most relevant:

Letter from Landlord to Tenant April 9, 2018

- Written noise complaint from strata regarding April 8, 2018 at 4:30 a.m.
- Repeat incidents that were disruptive and concerning
- Residents called police
- Tenant told Landlord she called police as well because daughter and daughter’s boyfriend are out of control and she is trying to have them removed
- Strata issued \$200.00 fine for breach of by-laws
- Landlord has requested tenancy end as soon as possible

Email from strata manager April 9, 2018

- \$200.00 fine issued for April 8, 2018 incident

- Attachment indicating Tenant has caused unreasonable noise and unreasonably interfered with rights of others to enjoy property

Letter from Landlord to Tenant April 5, 2018

- Written noise complaint from strata regarding March 30, 2018
- Repeat incidents that were disruptive and concerning
- Residents called police and Ministry of Child and Family Development
- Tenant told Landlord she also called police because daughter and daughter's boyfriend are out of control
- Landlord instructed to end tenancy if further complaints received

Email from strata manager April 3, 2018

- Complaint from resident regarding an altercation in the rental unit on March 30 that could be heard by the resident

Email from strata manager March 5, 2018

- Domestic dispute reported March 2, 2018
- Police called to attend

Email from strata manager February 28, 2018

- Complaints received regarding noise and fighting

Email from strata manager February 26, 2018

- Noisy and ongoing confrontation at rental unit on February 24 from 12:00 to 1:30 p.m.
- Police may have been called
- Council frustrated with Landlord's inability to manage the tenants

Complaints notice from strata September 7, 2017

- September 6, 2017 at 6:00 p.m. several people, allegedly Tenant and daughter, engaged in very loud dispute on balcony, fighting, vulgar screaming
- Neighbours disturbed
- Loud noise and swearing have been ongoing since tenants moved in

Email from strata manager September 7, 2017

- Complaints about rental unit are constant
- Received four complaints from previous night
- Swearing, stomping, yelling, violence in unit escalating
- Will be sending bylaw fine notice out

Email from strata manager June 5, 2017

- Complaints received about stomping, thumping, heavy footsteps (only when lessee not home), shrieking, arguments, foul language (in unit, stairs and parking lot)

Email from strata manager September 19, 2016

- Received two written noise complaints about loud pounding music after hours

Letter from Landlord to Tenant September 6, 2016

- Written noise complaints from strata
- Several loud noises after midnight from unit August 19 and 20
- Disturbing neighbours

Email from strata manager August 22, 2016

- Complaint received for loud music after midnight August 19 and 20

Email from strata manager May 2, 2016

- Noise complaint from May 1 at 10:00 p.m.
- Complainant putting up with loud music from unit on many occasions

The Property Manager agreed the complaints were made while the Tenant's daughter was living in the rental unit. He said he understood the Tenant had asked her daughter to leave and that the daughter appears to have left.

The Property Manager did not know if written notice was sent to the Tenant regarding the incidents that occurred February 26 and 28 and March 5. The Property Manager said the Tenant was informed of the complaints through phone calls or in person each time a complaint was received.

The Tenant was given an opportunity to respond. I understood the Tenant's position to be that she was not disputing the complaints but was saying the complaints resulted from the actions of her daughter and others. The Tenant admitted her daughter got loud. She testified that her daughter behaved when she was around and that most of the disturbances occurred when she was not home.

The Tenant said she was informed of the severity of the situation in April. She said she had her daughter out of the rental unit within a few days. The Tenant said she received

the letters dated April 5 and 9 on April 11. I understood the Tenant to say that she was made aware of the complaints around the time they were made.

The Tenant submitted an email stating she is disputing the Notice. She says she did what was needed to correct the situation as quickly as possible once she was aware of the severity of the situation. She says she had asked her daughter and daughter's boyfriend to leave by the following week. She says they are not allowed back. She says it has been quiet since her daughter and daughter's boyfriend left.

### Analysis

Section 47(1)(d)(i) of the *Act* allows a landlord to end a tenancy if the tenant or a person allowed on the property by the tenant has "significantly interfered with or unreasonably disturbed another occupant or the landlord of the" property.

A notice to end tenancy under section 47 of the *Act* must be served on the tenant in accordance with section 88 of the *Act*. The notice must comply in form and content with section 52 of the *Act*.

The Landlord has the onus to prove the grounds for the Notice.

Based on the testimony of both parties, I find the Notice was served on the Tenant in accordance with section 88(a) of the *Act*.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 47(3) of the *Act*.

Based on the documentary evidence submitted by the Landlord, I make the following findings. I find numerous complaints were made in relation to the rental unit from February of 2016 to April of 2018. I find approximately 11 noise complaints were made between May of 2016 and April of 2018. I find police were called in relation to these disturbances three, if not four, times. I find the Ministry of Child and Family Development was called regarding one of these incidents. I find the complaints related to domestic disputes and loud music. I did not understand the Tenant to dispute any of this.

I accept the testimony of the Property Manager that the Tenant was informed of these complaints through phone calls and in person at the time they were made. I understood the Tenant to agree she was made aware of the complaints around the time they were

made. Further, I do not accept that the Landlord would receive the number of complaints they did without talking to the Tenant about them.

I accept the testimony of the Tenant that the complaints related to actions of her daughter and others although I note the September 6, 2017 complaint related to the Tenant and her daughter. I did not understand the Property Manager to dispute that the complaints related to the actions of the Tenant's daughter and others. However, these are people the Tenant allowed on the property and she was responsible for their actions.

I am satisfied that persons allowed on the property by the Tenant significantly interfered with or unreasonably disturbed other occupants of the property. I find this given the number of noise complaints made, the period over which the complaints were made and the nature of the noise complained of. I find 11 noise complaints over two years to be a significant interference. This is particularly so when the noise resulted in police being called to the rental unit three, if not four, times. I find noise caused by domestic disputes and loud music to be an unreasonable disturbance. I do not find the noise complained of to be the usual noise one would expect to hear in a rental building. I find this type of noise is completely within the control of those making it and is not the type of noise other occupants should be subjected to.

I accept that the Tenant has asked her daughter and daughter's boyfriend to leave. The Property Manager did not dispute this. However, this is not a basis to cancel the Notice. In my view, it is not sufficient that the Tenant addressed the situation when it became so bad that the Landlord issued the Notice. The situation should have been addressed before it amounted to a significant interference and unreasonable disturbance of other occupants.

Given the above, I dismiss the Tenant's Application. Pursuant to section 55(1) of the *Act*, I grant the Landlord an Order of Possession. The Property Manager agreed that, if I issued an Order of Possession, the Order could be effective June 30, 2018.

### Conclusion

The Tenant's Application is dismissed.

The Landlord is granted an Order of Possession effective at 1:00 p.m. on June 30, 2018. This Order must be served on the Tenant. If the Tenant does not comply with this Order, it may be filed in the Supreme 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 *Act*.

Dated: June 06, 2018

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Residential Tenancy Branch