



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AMACON PROPERTY MGT. INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC FFT

### Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant requesting a cancellation of a One Month Notice to End Tenancy for Cause dated April 30, 2018. The Tenant also requests an order for payment of the filing fee.

The agent and building manager “JK” appeared on behalf of the Landlord, and the Tenant appeared along with her witness, JW, for the scheduled hearing. I find that the notice of hearing was properly served and that evidence was submitted by all parties. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

### Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the Notice to End Tenancy, pursuant to section 47(4) of the *Residential Tenancy Act* (“Act”)?

If not, is the Landlord entitled to an Order of Possession, pursuant to section 47 and 55 of the Act?

Is the Tenant entitled to payment of her filing fee, pursuant to section 72 of the Act?

### Background and Evidence

The tenancy began on November 15, 2017 for a fixed term ending November 30, 2018. The rent was agreed at \$1,350.00 per month, payable on the 1<sup>st</sup> of each month; a security deposit of \$675.00 was paid.

The Landlord states that the Tenant is very sensitive to noise and began complaining about noise disturbances immediately after moving in last November. He states that this is a relatively peaceful building, and he has only had to deal with one other noise complaint in recent history, aside from the multiple complaints from this tenant.

It is a 40 year-old wood structure, and noise can be heard throughout the building, which the other occupants find to be reasonable. However, this Tenant began making complaints to the building manager through text messages and on November 27, 2017, they sent a letter to her asking that the building manager not be contacted outside business hours unless it is an emergency, and that future complaints should be in writing to the manager the following day.

The Landlord states that they investigated the noise complaints and found them to be unsubstantiated. He states that the Tenant began retaliating by stomping her feet on the floor, whenever she heard noise in the suite below her, which is occupied by JK, the building manager. JK testified that if she washes dishes after 9 pm, has any guest over, or tries to go in or out of her suite with belongings, the Tenant often began deliberately stomping on her ceiling. She says it is very disruptive and upsetting and that she is forced to do nothing after 9 pm as a result.

The Landlord states that a warning letter was sent to the Tenant March 13, 2018 in response to this noise issue. JK states that the police came to her door twice in April, on April 2<sup>nd</sup> and April 16<sup>th</sup>, both times around 11 pm. They told her that there had been noise complaints.

The Tenant denies that she called the police and she had a witness testify that it is the practice of police not to disclose the name of the caller complaining to prevent retaliation. There was no evidence submitted to suggest that charges or a fine was issued as a result of the police visit.

The Landlord also submitted text messages between JK and the Tenant about noise issues, JK stating that on one occasion, she wasn't even in the suite and yet the Tenant was complaining of noise. Text messages purported to be from the Tenant state that "it

*seems people just run up and down the stairs and slamming the entry doors doesn't matter when it's midnight or 5 am. Is there something that can be addressed so people stop doing that?"*

The Tenant states that she has a daughter with health issues and she submitted a note from a doctor confirming this; she states that it is crucial that her daughter go to bed early and not be disturbed in order to cope with her condition. She argues that she did not make repeated complaints to the Landlord about noise, but that she had a plumbing issue and a concern about her heating which she informed the Landlord about.

She states that other residents were moving in or out of suites and making noise after 7 pm, which is contrary to building bylaws, and that she did tell the building manager and this occurred several times in November after she moved in. She states that she contacted police in December when her neighbor was drunk and making excessive noise and that the police got him to quiet down. She states that people are in and out of the building, sometimes as late as 1 a.m. and that she hears doors slamming and footsteps in the stairwell and hallway which disrupt her sleep and her daughter.

The Landlord states that the building is simply not suitable for the Tenant and that he would like her to move out, and is prepared to give her time to do so. The Landlord served a One Month Notice to End Tenancy dated April 30, 2018 which was left on the Tenant's door. It had an effective date of May 30, 2018. Reasons states were: Tenant significantly interfered with or unreasonably disturbed another occupant; Tenant engaged in illegal activity which adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant; and breach of a material term of the tenancy agreement. The Tenant disputed the notice on May 1, within the required timeline. The Tenant states she is a full time working single mother, and cannot be moving often as it is costly and disruptive. She would like to stay for the full term of her lease. She provided written character references confirming that she is a good mother and that the daughter is on a strict sleeping schedule which requires minimal noise.

### Analysis

Under section 47 of the Act, a landlord may serve a One Month Notice to End Tenancy for Cause. I find that the Landlord served a notice in proper form and content that complies with section 52, stating the following reasons:

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

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant; and the Tenant has committed a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord argues that the Tenant has unreasonably disturbed the Landlord and other occupants of the building. I find that there is insufficient evidence to support a claim that the Tenant or her guest has engaged in any *illegal activity*. I further find that there is a lack of evidence to support the claim that the Tenant has committed a serious breach of a material term of her tenancy agreement. However, evidence was presented in support of an argument that the Tenant may have interfered with or unreasonably disturbed another occupant or the Landlord. The Landlord is obligated to protect all tenants' right to quiet enjoyment, pursuant to section 28 of the Act:

***Protection of tenant's right to quiet enjoyment***

**28** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29;*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

Residing in a multi-unit rental building sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the Act.

I find that the Landlord made reasonable inquiry into the Tenant's complaints about the noise concerns she had. The age and type of the building make it impossible to stop all noise from being heard within the units. Other residents are entitled to come and go

from the building, even in the night, and this may result in footsteps being heard and doors closing. The Landlord is not allowed to restrict guests or visitors, even late at night. I find that there is insufficient evidence to support the Tenant's assertion that the noise is unreasonable or that the Landlord ought to be doing more to control the noise levels.

With respect to the Landlord's claim that the Tenant retaliates by stomping on the floor, disturbing the resident below, I find that the witness JK is reliable. Her text messages confirm the nature of the complaints of the noise from the Tenant which support the assertion that she and/or her daughter are highly sensitive to normal levels of noise in a building of this type.

The Landlord argues that after their March warning letter, the Tenant escalated matters by calling police on two occasions complaining about the building manager who resides below her; there is insufficient evidence to prove that the Tenant made these calls to police as it is circumstantial at best. There was no evidence before me to show that the Tenant continued to stomp on the floor or make excessive noise deliberately after the March warning letter was sent to her.

The Tenant states she would not make excessive noise to let her neighbor know that she is unhappy, as she needs to stay quiet for her daughter to rest; although I find that she has done this in the past, I find that she has not continued with this behaviour since her last warning and for that reason, I am cancelling the notice to end tenancy based on what the Landlord admits were "minor disruptions".

However, given the past history involving the Tenant, she is again warned that any future disruptions from her may warrant her eviction from the building, as she has been duly warned to cease any deliberate and excessive noise. She may wish to reconsider her living arrangements, which appear to be unsuitable for her family, and the Landlord's suggestion that she find a new place to live; the other residents are entitled to enjoy the building and their respective units; reasonable noise levels are to be expected.

As the Tenant was successful in her application, she is awarded the filing fee of \$100.00. The Tenant may deduct this sum from her next rent payment in satisfaction of this award.

Conclusion

I hereby cancel the One Month Notice to End Tenancy for Cause dated April 30, 2018 and the tenancy shall continue until terminated with proper notice from either party.

The Tenant shall deduct \$100.00 from rent payable as reimbursement for her filing 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: June 11, 2018

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Residential Tenancy Branch