



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR FFT LRE OLC PSF OPR DR

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt applications from both parties:

The landlords applied for:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities.

The tenant applied for:

- a cancellation of the landlords' notice to end tenancy pursuant to section 46 of the *Act*;
- an Order directing the landlords to comply with the *Act* pursuant to section 62;
- an Order setting conditions on the landlords right to enter the rental unit;
- an Order for the landlords to provide services or facilities; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant, the landlords and the landlords' agent, S.S. appeared at the hearing. All parties were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

Both of the tenants and the landlords acknowledged receipt of each other's applications for dispute resolution. I find that all parties were duly served with the other's application for dispute resolution.

### Issue(s) to be Decided

Can the tenant dispute the landlords' Notice to End Tenancy? If not, are the landlords entitled to an Order of Possession?

Should the landlords be directed to comply with the *Act*?

Should conditions be set on the landlords' right to enter the rental unit?

Should the landlords be directed to provide services?

Can the tenant recover the filing fee?

### Background and Evidence

Undisputed testimony was provided by the tenant that this tenancy began on January 1, 2018. Rent of \$1,000.00 cash is paid each month, and a security deposit of \$1,000.00 paid at the outset of the tenancy continues to be held by the landlord. The landlords confirmed that no receipts were provided for rent.

On April 24, 2018 a 10 Day Notice for Unpaid rent was posted on the tenant's door. This Notice which was provided to the hearing as part of the parties' evidentiary packages stated that it was for "Brian". The landlords' agent explained that the tenant had failed to pay rent for April, May and June 2018. The tenant disputed this, arguing that rent was paid each month in cash; however, he acknowledged that no rent was paid for June 2018.

In addition to an application disputing the landlords' Notice to End Tenancy, the tenant has applied for Orders directing the landlords to comply with the *Act*. Specifically, the tenant sought for limits to be set on the landlords' ability to enter the rental unit and to provide him with a quiet home. The tenant alleged that the landlords make excessive noise early in the morning (5:00 A.M.), set up speakers near his bedroom door which play religious prayer music 24 hours per day, and entered his suite on two occasions without proper notice. The tenant said that on April 23, 2018 he found his suite locked from the inside and then on April 25, 2018 he discovered numerous items from his unit missing and in the landlords' garage. The tenant explained that following this incident the police were called and his items were returned.

The landlords' agent disputed that any noise had been purposely made by the landlords, or that any noise had been intentionally directed towards the tenant. The landlords' agent explained that children lived above the rental unit in question and he attributed the noise which the tenant complained of, to the normal activities of young children. The landlords acknowledged that music is played throughout the day and night but argued that it was relaxing prayer music and should not be considered a disturbance. The landlords confirmed that some items had been moved from the rental unit to the garage but said that this was done as a protective measure because the tenant had failed to properly secure the rental unit and numerous items were left out in the open. The landlords stated that all items removed from the rental unit had been returned to the tenant.

### Analysis

I will begin by analyzing the Notice to End Tenancy and then turn my attention to the remainder of the tenant's application.

Section 55(1) of the *Act* reads as follows:

*55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord's notice to end tenancy complies with section 52{**form and content of notice to end tenancy**}, and*

*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

After reviewing the evidence submitted to the hearing by both parties, I find that the 10 Day Notice dated April 24, 2018 which was disputed by the tenant to be invalid. The landlords have failed to properly identify on the 10 Day Notice who is subject to the notice. The only named contained on the 10 Day Notice is listed as "Brian". Additionally, little evidence was presented by the landlords that any rent remains outstanding. The landlords have not produced receipts or ledgers indicating that rent has not been paid and I accept the tenant's oral testimony that rent was paid in cash for the months in question. For these reasons, I dismiss the landlord's application for an Order of Possession.

The remainder of the tenant's application concerns orders sought restricting the landlords' right to enter his rental unit or and directing the landlord to comply with the *Act*.

Section 28 of the *Act* states, "A tenant is entitled to quiet enjoyment, including, but not limited to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 and use of common areas for reasonable and lawful purposes, free from significant interference." After considering the testimony of both parties and having considered the landlords' statements acknowledging that prayer music is played for many hours at a time and that the tenant's items were moved from his rental unit, I order the landlord to comply with sections 28 & 29 of the *Act*.

Sufficient evidence was presented demonstrating that the landlords did not provide the tenant with at least 24 hours' notice to enter the rental unit. If the landlords had concerns about the security of the tenant's items, the landlords could have called or texted the tenant, or simply closed the tenant's door. The landlords had no reason to move the tenant's items. In addition, I find that a person renting a suite from a landlord can reasonably expect the landlord to observe quiet hours between 11:00 P.M. and 8:00 A.M. While the music played may be relaxing and calm as described

by the landlords, there is little reason to have it playing throughout the night. I order the landlords to observe the tenant's right to quiet enjoyment.

Failure to adhere to these orders may result in the tenant pursuing additional relief under the *Act*.

As the tenant was successful in his application, he may recover the \$100.00 filing fee pursuant to section 72 of the *Act*. In place of a monetary award, the tenant may withhold \$100.00 from a future rent payment on **ONE** occasion.

### Conclusion

The tenant was successful in cancelling the landlords' 10 Day Notice. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenant may withhold \$100.00 from a future rent payment on **ONE** occasion.

The landlords are directed to comply with the *Act*. Specifically, if the landlords wish to access the tenant's rental unit, the landlords **must** provide the tenant with sufficient notice as described in section 29 of the *Act*, and the landlords are to ensure that the tenant's right to quiet enjoyment is not violated.

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 25, 2018

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Residential Tenancy Branch