



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GAMALO HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on August 3, 2018 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated July 23, 2018 (the “Notice”). The Tenant also sought reimbursement for the filing fee.

The Tenant appeared at the hearing with Legal Counsel. The Agent for the Landlord (the “Agent”) and owner of the rental unit building (the “Owner”) appeared at the hearing for the Landlord.

The Owner provided the correct name for the Landlord and this is reflected in the style of cause.

I explained the hearing process to the parties who did not have 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. The Agent confirmed the Landlord received the hearing package and Tenant’s evidence and raised no issues in this regard. The Tenant and his Legal Counsel confirmed they received the Landlord’s evidence and raised no issues in this regard.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence

and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to reimbursement for the filing fee?

### Background and Evidence

The parties agreed the written tenancy agreement submitted by the Landlord is accurate. The agreement lists a different name for the landlord. The Owner advised this was a previous name of the Landlord. The agreement is with the Tenant in relation to the rental unit. The tenancy in relation to this agreement started April 1, 2015 and was for a fixed term ending September 30, 2015. The tenancy then became a month-to-month tenancy.

Both parties agreed the Tenant had a prior tenancy agreement with the Landlord in relation to the rental unit.

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.

The Notice includes an addendum outlining the details of cause. It refers to three incidents. First, smoking by the side entrance May 2, 2016. Second, loud conversation at 2:30 a.m. in common areas and the unit on January 29, 2017. Third, noise disturbance after midnight on July 21, 2018. The addendum notes that the disturbances extend beyond the three incidents outlined.

The Agent testified that she served the Notice on the Tenant by posting it on the door of the rental unit July 23, 2018. The Tenant testified that he received the Notice July 24, 2018 posted on the door of the rental unit.

The Tenant confirmed he filed the Application August 3, 2018.

The Agent testified about the smoking incident May 2, 2016. She said the Tenant was smoking in an area on the property where smoking is prohibited. She said the Tenant

was aware of the smoking prohibition given no-smoking signs in the area. The Agent testified that the Tenant was given a notice indicating he woke up other tenants by smoking under their window. The Agent testified that the smoking woke her up and she went down and spoke to the Tenant about this.

Legal Counsel for the Tenant pointed out that there has been one smoking incident in eight years of the Tenant living at the rental unit. He submitted that this does not amount to a significant interference. He said there were no further smoking incidents since the one alleged.

The Tenant testified that the photos submitted by the Landlord of no-smoking signs are of signs that were put up after the incident in question occurred. He disputed that the Agent confronted him about smoking at the time.

In relation to the noise disturbances by the Tenant, the Agent pointed to the letters submitted as evidence. These included the following:

1. A copy of a text from the Tenant's immediate neighbour dated July 21, 2018 (Exhibit L-7). This relates to noise after midnight, banging into furniture and noise every night from furniture being moved. It says the Tenant and a guest were loud until 3:00 a.m. This text mentions that the walls are thin.
2. A letter from the Tenant's immediate neighbour dated August 13, 2018 (Exhibit L-8). It says her quiet enjoyment has been interrupted a number of times since she moved in on June 1, 2014. It says the Tenant has numerous guests late at night and that the neighbour can hear sex noises, furniture banging against the wall and loud conversation. It says the neighbour has been constantly dealing with noise from the Tenant. This letter mentions the thin walls in the building.
3. A letter from the Owner dated August 14, 2018 (Exhibit L-9). It says she has received numerous calls over the course of the Tenant's tenancy about noise disturbances. It says the Tenant has been given numerous warnings about the noise issue.
4. A letter from a subcontractor that works for the Landlord dated August 14, 2018 (Exhibit L-10). It says he has heard loud sex noises from the rental unit while at the building to do repairs since the Tenant moved in. It says this could be heard at the side entrance door.

The Landlord submitted a warning about noise disturbances issued to the Tenant dated January 29, 2017.

Legal Counsel for the Tenant submitted that there have only been two noise incidents in eight years that were 21 months apart. He said the disturbances are not continuous. He pointed out that the letters submitted by the Landlord state that the walls in the building are thin. He submitted that the problem is not with the Tenant, the problem is the thin walls in the building.

Legal Counsel said the rental unit is a small studio and that the Tenant has to fold down his bed and move furniture in order to use his bed. He also said the rental unit is right next to where everybody in the building enters and exits the building. Legal Counsel said the Tenant is conscientious when it comes to the noise issue.

The Tenant testified that the rental unit of his immediate neighbour wraps around his rental unit such that every wall, other than the wall with windows, is shared with her. The Tenant said his immediate neighbour is hypersensitive to noise and that he can hear her as well. He said his immediate neighbour has told him she can hear him open the window in his rental unit. He pointed out that it is only his immediate neighbour that is raising these noise issues in relation to him.

The Tenant explained that his window is near the back-door entrance. He pointed out that some of the noise complaints relate to incidents that did not occur during quiet hours. The Tenant submitted that he cannot be expected to be silent in his own rental unit.

The Tenant pointed to the letters he submitted from other tenants indicating they do not have issues with his noise level. The Tenant acknowledged that the authors of the letters do not live in rental units that are close to his. The Tenant said his immediate neighbour is the only person who shares a wall with him. He pointed out that others in the building walk by his rental unit all the time.

The Tenant testified that he spoke to a tenant that lives across the hall from him who was willing to write a letter on his behalf until she talked to the Agent who deterred her from doing so. In this regard, the Tenant pointed to correspondence submitted between the Agent and another previous tenant who did write a letter for the Tenant. In this, the Agent states in part, "I am very disappointed in you that you got involved with" the Tenant. She also states, "I read your letter to him and wished that you could have at

least discussed with me as other tenants had. I had done a lot for you to make sure you were well looked after during your stay at” the rental building. Legal Counsel for the Tenant submitted that this correspondence amounts to intimidation by the Agent. Legal Counsel said the same type of response was sent to two other tenants who wrote letters for the Tenant for this hearing. Legal Counsel said there were other tenants who were going to write letters but did not.

The Tenant submitted a letter from a tenant on the third floor which indicates he has experienced his own challenges with noise-transmission in the building as the building is older and not well insulated to sound.

The Tenant submitted a letter from two tenants who moved into the building in June 2018. The tenants state that they have not been affected by noise from the Tenant.

The Tenant submitted a letter from a tenant who moved into the building in September 2017. The tenant states that they have not been affected by noise from the Tenant.

In reply, the Agent submitted that the letters show the Tenant is constantly disturbing others. The Owner testified that the Tenant does not follow the rules of the building. She said there have been more than two incidents where the Tenant has disturbed others. She referred to a paragraph in the letter dated August 13, 2018 and labelled “Exhibit L-8” submitted as evidence which outlines a conversation the Tenant’s immediate neighbour had with a previous tenant.

In relation to the testimony that the Tenant is folding down his bed at night and that is the cause of the noise, the Owner testified that the Tenant’s bed is in one spot and does not need to be moved. She said the issue is the bed banging against the wall and not the Tenant moving furniture around. The Owner said the walls of the building are not thin. She submitted that the noise issue has been occurring prior to the Tenant’s immediate neighbour moving into the building. She referred to an incident when she was outside of the rental unit in the lobby and could hear sexual noises coming from inside the unit. The Owner said there have been issues with the Tenant playing his music too loud as well. She said the immediate neighbour has said she can no longer live at the rental unit building because of the noise.

The Owner said the complaint about loud conversation at 2:30 a.m. in common areas and the unit on January 29, 2017 was a verbal complaint from a tenant. She testified that other tenants have made verbal complaints over the years.

#### Analysis

The Landlord was permitted to serve the Notice based on the grounds noted pursuant to section 47(1)(d) of the *Residential Tenancy Act* (the “Act”). The Tenant had 10 days from receiving the Notice to dispute it under section 47(4) of the *Act*.

I accept the testimony of the Tenant that he received the Notice July 24, 2018. Based on the testimony of the Tenant and our records, I find he filed the Application August 3, 2018, within the time limit set out in section 47(4) of the *Act*.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules of Procedure. The standard of proof is on a balance of probabilities meaning it is more likely than not that the facts occurred as claimed.

I am not satisfied based on the evidence provided that the Landlord has established the grounds for the Notice.

Even if I accept the smoking incident occurred, I do not accept that the Tenant smoking in a non-smoking area outside of the building at 5:00 a.m. one time amounts to a significant interference or unreasonable disturbance of others. I also note that this alleged incident occurred more than two years prior to the Notice being issued and presumably has not occurred since as stated by Legal Counsel for the Tenant given the Landlord did not submit that it has.

In relation to the noise disturbances, the Landlord submitted evidence from three individuals: the Tenant’s immediate neighbour; the Owner; and a subcontractor. The only tenant of the building who has provided a written complaint is the Tenant’s immediate neighbour.

I accept that the rental unit of the Tenant’s immediate neighbour wraps around the Tenant’s rental unit and that every wall, other than the wall with windows, is a shared wall. Neither the Agent nor the Owner disputed this.

I accept that the building has thin walls as submitted by Legal Counsel for the Tenant and the Tenant. This is supported by statements of two other tenants in the building. I find that the Owner’s testimony that the building does not have thin walls calls into question her credibility given this is stated twice in the Landlord’s own evidence.

The Tenant submitted that his immediate neighbour is hypersensitive to noise and has told him that she can hear him open the windows in the rental unit. The Landlord did

not call the Tenant's immediate neighbour as a witness at the hearing to provide further evidence about the noise issue or to refute this position of the Tenant.

I accept the testimony of the Tenant and submission of Legal Counsel that the Tenant must fold down his bed at night. The Owner disputed this; however, she did not explain how she knew whether the Tenant had to fold down his bed or not. I find the Tenant is more likely than the Owner to know his own furniture situation. I have read the text from the Tenant's immediate neighbour about noise she hears every night. I cannot find that this noise is something other than the Tenant folding his bed up or down based on the wording of the text. Again, the Landlord did not call the Tenant's immediate neighbour as a witness to further explain her text. I do not find noise caused by the Tenant folding his bed up and down to be unreasonable. The text only refers to one other noise incident.

The Landlord submitted only one written complaint from a tenant prior to the Notice being issued. The remaining letters submitted were written after the Tenant filed the Application. I place less weight on these letters given the authors did not document the noise complaints in writing on their own accord prior to this dispute arising.

The letter from the Owner refers to numerous complaints received over the years; however, the Landlord has not provided any written material to support that this has occurred. Nor has the Landlord called any witnesses at the hearing to confirm this assertion.

I place no weight on the paragraph in the letter of the Tenant's immediate neighbour labelled Exhibit L-8 about a previous tenant alleging noise issues in relation to the Tenant given there is no evidence before me from the previous tenant themselves.

The Landlord only submitted one written warning letter issued to the Tenant about noise and this was from January 29, 2017, more than a year prior to the Notice being issued.

I acknowledge that the Owner testified about hearing noises from the rental unit. I also acknowledge that the subcontractor wrote a letter in relation to noises from the unit. Neither the Owner nor the subcontractor are tenants in the building. The Landlord has not provided letters from other tenants in the building, other than the Tenant's immediate neighbour, that speak to hearing noise from the rental unit in the hallway. As the Tenant pointed out, other tenants in the building may not live next to him but would use the hallway and common areas. Some of these tenants wrote letters indicating they have had no issues with the Tenant and noise. I would expect that the other tenants in

the building are in the hallway and using the common areas more frequently than the Owner and subcontractor who do not live in the building.

I have concerns about the evidence submitted in this case given the correspondence submitted between the Agent and prior tenant who wrote a letter on behalf of the Tenant. Legal Counsel for the Tenant and the Tenant testified that other tenants in the building were going to write letters on behalf of the Tenant but did not because of the Agent deterring them from doing so. I do find this relevant in relation to the tenant across the hall from the Tenant. I find the response and comments of the Agent in the correspondence submitted supports the submission of Legal Counsel and the Tenant that the Agent deterred others from providing evidence on behalf of the Tenant. I find this raises concerns about whether I have an accurate picture of the situation before me.

In the circumstances, I am not satisfied that the Tenant has caused an unreasonable amount of noise. I accept that the Tenant's immediate neighbour can hear noise from the rental unit; however, I agree with the Tenant that he cannot be expected to be silent in his rental unit and I am not satisfied that the noise is anything other than the usual noise one would expect to hear from their neighbour in an older building with thin walls.

I am not satisfied based on the evidence of the Landlord that the Tenant has caused unreasonable noise and therefore I am not satisfied the Landlord has proven the grounds for the Notice. The Notice is therefore cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenant was successful in this application, I find he is entitled to reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant is authorized to withhold \$100.00 from one future rent payment as reimbursement for the filing fee.

### Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

The Tenant is entitled to reimbursement for the filing fee and is authorized to withhold \$100.00 from one future rent payment as reimbursement for the 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 *Act*.

Dated: September 24, 2018

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Residential Tenancy Branch