



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, RR, ERP, DRI, OLC

### Introduction

On February 21, 2019, the Tenant applied for dispute resolution under *the Residential Tenancy Act* (“the Act”) seeking an order for emergency repairs; for a rent reduction; to dispute an illegal rent increase; and for an order that the Landlord comply with the Act, Regulation, or tenancy agreement.

On March 4, 2019, the Tenant amended her application to include a request to cancel a One Month Notice To End Tenancy for Cause dated February 21, 2019.

The matter was scheduled as a teleconference hearing. The Tenant and Landlord attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence that is before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator to dismiss issues with or without leave to reapply.

I find that the most important issues to deal with during this hearing is whether or not the Landlord has sufficient cause to end the tenancy. Therefore, I will deal with the Tenant's request to cancel the One Month Notice to End Tenancy for Cause and I dismiss the balance of the Tenant's claims with liberty to re-apply.

The hearing was reconvened and limited to taking testimony from the Landlord's witness. The parties were sent an Interim Decision and a Notice of Dispute Resolution Proceeding containing the date, time and conference codes. The Residential Tenancy Branch Case Management System indicates that the new hearing information was emailed to the Tenant on April 3, 2019.

The Landlord and the Landlord's witness attended the reconvened hearing; however, the Tenant did not attend on April 11, 2019.

The Landlord's witness was provided an opportunity to provide affirmed testimony on April 11, 2019.

#### Issue to be Decided

- Does the Landlord have sufficient cause to end the tenancy?

#### Background and Evidence

The parties testified that the tenancy commenced on December 1, 2018, on a month to month basis. Rent in the amount of \$1,050.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid a security deposit of \$500.00 to the Landlord.

The Landlord issued a One Month Notice to End Tenancy for Cause dated February 21, 2019 ("the One Month Notice") to the Tenant.

The reasons for ending the tenancy within the One Month Notice are:

*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*

*Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so.*

The One Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a Tenant does not file an Application within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit or vacate the site by the effective date of the Notice.

The Tenant confirmed that she received the One Month Notice from the Landlord on February 25, 2019 and she disputed the Notice on March 4, 2019, within the required time period.

The Landlord provided affirmed testimony on the reasons for ending the tenancy. The Landlord testified that the rental unit contains four units; two up and two down. The Tenant lives in one of the lower units. The Landlord provided testimony that the Tenant or a person permitted on the property by the Tenant has disturbed other occupants of the rental property.

The Landlord testified that on September 24 2018, while Tenant was out of country, the Tenant's son broke the window of the rental unit to gain access. The Landlord testified that the Tenant's son invited people over and was partying. The Landlord testified that the Tenants son is not a Tenant and is not on the tenancy agreement.

The Landlord testified that she made contact with the Tenant and she informed the Landlord that her son has permission to be in the unit. The Landlord testified that she verbally informed the Tenant that she would be getting a breach letter.

The Landlord testified that the occupant living in the unit upstairs heard the window break and reported it to police. The Landlord testified that the occupant upstairs was disturbed by loud partying of the Tenant's son. The Landlord testified that Police attended and removed the Tenant's son.

The Landlord testified that a breach type letter was served to the Tenant by posting it to the Tenant's door. The Landlord provided a copy of a breach letter dated September 25, 2018 that was issued to the Tenant. The breach letter indicates that the Tenant's guest disturbed other occupants with loud music, faulty language and aggressive behaviour.

The Landlord submitted that he has received additional noise complaints as follows:

|                   |          |   |
|-------------------|----------|---|
| July 23, 2018     | late     | Tenant and guest were noisy. Complaint received.        |
| January 12, 2019  | 2:30 am  | Other occupant called police for noise violation        |
| January 31, 2019  |          | Smoking marijuana and Police called for noise violation |
| February 17, 2019 | 12:30 am | Noise late at night                                     |

The Landlord testified that after the One Month Notice was issued there have been additional reports of noise and disturbance. The Landlord testified that the Tenant's disturbed guests disturbed other occupants by fighting and arguing on March 16, 2019 and March 22, 2019.

The Landlord testified that the occupant living directly above the Tenant has made the noise complaints. The other occupants of the unit have not filed any complaints. The Landlord testified that there is no sound proofing –deadener- between the floors and there is shared heat ducting.

The Landlord provided a copy of a letter dated July 27, 2018 sent to the Tenant regarding noise and smoking. The Landlord provided a copy of an email complaint dated January 12, 2019 regarding smoking and noise.

In reply, the Tenant testified that she was out of the country from September 15, 2018 until October 11, 2018.

The Tenant provided testimony acknowledging that her son was in the rental unit on September 24, 2018. She testified that she never received the breach letter from the Landlord. The Tenants advocate testified that she saw the envelope on the Tenants door but does not know who removed it.

The Tenant testified that police would come to her door two or three times per week due to the complaints of the person living above her. The Tenant submitted that she has a problem with the Tenant living above her who tries to control all the other occupants. The Tenant testified that the police are confused when they respond to the complaints.

The Tenant provided a letter from her advocate Ms. C.T. who is another occupant of the rental property. Ms. C.T. submitted that Ms. S.K. repeatedly calls the police on the Tenant without just cause. She submitted that she has never heard any noise coming from outside on the property. She submits that the Tenant is being harassed by Ms. S.K.

The Landlord provided Ms. S.K. as a witness. Ms. S.K. provided affirmed testimony as follows:

- On September 24/25 the Tenant's son disturbed her by having people over and partying. She testified that the Tenant's son shoved her twice.
- On January 12, 2019, the Tenant and her fiancé were disturbed by the noise of partying in the unit below her.
- On January 31, 2019, the Tenant was disturbing her by making noise after 11:00 pm and the police were called.
- On February 16/17 2019, the Tenant came into the carport yelling at her and pushed her car door into her. On February 17, 2019, the Tenants disturbed her by partying late at night.

With regard to noise transfer through the floor that separates the units, Ms. S.K. testified that when there is no loud partying from below, she does not hear any noise from the Tenant's unit.

### Analysis

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

*A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.*

*Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment.*

In the matter before me, the Landlord has the onus to prove that the reasons to end the tenancy are valid. Based on the evidence and testimony before me, I make the following findings:

The Landlord has a duty to protect a Tenant's right to quiet enjoyment and must take reasonable steps to correct situations where there have been unreasonable disturbances.

I accept that the occupant living above the Tenant was unreasonably disturbed by noise from the Tenant's guest on September 24, 2018. While the Tenant may not have received the breach letter, I accept that she permitted her son to be in the unit and she was verbally informed she would receive a letter and was aware of the incident.

I accept the Landlord's testimony that the Landlord has received numerous noise and smoking complaints from another occupant of the rental property. I find that a number of these incidents occurred after the Tenant received an official warning about noise.

While I accept the evidence before me that there is conflict between the Tenant and the occupant of the upper unit, I find that the Landlord has provided the stronger evidence that the occupant of the rental property has been unreasonably disturbed by noise.

I acknowledge the submission from the Tenant's advocate that she has never heard any noise coming from outside on the property; however, I assign that submission little weight as I find that the dispute involves rental units that are directly above/ below each other.

I accept Ms. S.K.'s testimony that she has been disturbed by noise from the Tenant on multiple occasions.

I find that the Tenant or the Tenant's guests have unreasonably disturbed another occupant or the Landlord.

The Tenant's application to cancel the One Month Notice To End Tenancy For Cause dated February 21, 2019 is dismissed.

Under section 55 of the Act, when a Tenants application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the One Month Notice issued by the Landlord meets the requirements for form and content.

I find that the Landlord is entitled to an order of possession of the rental unit effective no later than 1:00 pm on April 30, 2019, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

### Conclusion

I find that the Tenant or the Tenant's guests have unreasonably disturbed another occupant or the Landlord.

The Tenant's application to cancel the One Month Notice To End Tenancy For Cause dated February 21, 2019, is dismissed.

The Landlord is granted an order of possession effective April 30, 2019, after service on the Tenant.

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: April 17, 2019

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Residential Tenancy Branch