



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SURREY VILLAGE  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

CNC, FFT

### Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on April 03, 2019 the Application for Dispute Resolution, the Notice of Hearing, and evidence she submitted to the Residential Tenancy Branch on April 05, 2019 were delivered to the Landlord's business office. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On April 18, 2019 the Tenant submitted 17 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was delivered to the Landlord's business office on April 18, 2019. The Agent for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On April 26, 2019 the Landlord submitted 6 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was personally served to the Tenant on April 19, 2019. The Tenant stated that she found this evidence under her door on April 26, 2019. As the Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed, but is only referenced in this written decision if it is relevant to my decision.

### Preliminary Matter

Section 4(i) of the *Residential Tenancy Act (Act)* stipulates that the *Act* does not apply to living accommodation rented under a tenancy agreement that has a term longer than 20 years.

The Advocate for the Tenant submitted that the Residential Tenancy Branch does not have jurisdiction over this tenancy, pursuant to section 4(i) of the *Act*, as this tenancy began in 1993. The Landlord and the Tenant agree that when this tenancy began the tenancy was for a fixed term of one year and that since that time the tenancy has been a periodic, or month-to-month, tenancy.

I find that section 4(1) of the *Act* exempts tenancies that have some sort of term in it that extends over the period of over twenty years, such as a fixed term tenancy of 21 years. I find that section 4(1) of the *Act* does not exempt periodic tenancies simply on the basis that they have lasted longer than 20 years.

I therefore assume jurisdiction in this matter.

### Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Act*, be set aside?

### Background and Evidence

The Landlord and the Tenant agree that:

- on April 02, 2019 a One Month Notice to End Tenancy for Cause was personally served to the Tenant;
- the Notice to End Tenancy declared that the Tenant must vacate the rental unit by May 01, 2019;
- the reasons for ending the tenancy cited on the Notice to End Tenancy were 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; that the Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant; and that the Tenant has breached a material term of the tenancy that was not corrected within a reasonable time; and

- in the “Details of Cause” section of the Notice to End Tenancy the Landlord indicated the Notice was being served because noise from the rental unit is bothering the occupant of the lower unit.

The Agent for the Landlord presented the following evidence and arguments to support the Notice to End Tenancy:

- the Witness lives below the Tenant;
- the Witness has repeatedly reported being disturbed by noises in the rental unit;
- the Witness reported being disturbed by closet and cupboard doors being closed in the unit;
- the Witness reported that he believes the Tenant is deliberately closing her doors loudly;
- the Witness has provided the Landlord with tape recordings of the noise;
- she has listened to the tape recordings and on the basis of those recordings she believes the Tenant is “overly slamming” the doors;
- the Landlord did not receive any complaints from the Witness regarding noise in the rental unit prior to 2017;
- the Landlord has not received any other noise complaints about the Tenant;
- during a meeting between the Witness and the Tenant in February of 2019, the Tenant speculated that the Witness may be responsible for vandalism to her car and the area outside her entry door;
- the Landlord tested the cupboard and closet doors in the rental unit and determined they are noisy when closed “firmly”;
- the Landlord determined that if the cupboard/closet doors are closed loudly, the noise can be heard in the Witness’s suite;
- the Landlord has added bumpers to the cupboard doors;
- if the cupboard/closet doors are closed softly, the noise cannot be heard in the Witness’s suite.

In response to the Notice to End Tenancy the Advocate for the Tenant stated that:

- the Tenant speculated that the Witness may be responsible for vandalism to her car and outside her entry door after she learned he was complaining about noise in the rental unit, but she does not know whether he is responsible for that vandalism;
- she typically works until 1:00 a.m.;
- she opens cupboard and closet doors when she arrives home, as part of her normal daily activities; and
- she opens the doors in a normal manner.

The Witness stated that:

- he lives below the Tenant;
- for the last seven years he has been disturbed by noise emanating from the rental unit on a daily basis;

- the noise is caused by cupboard doors banging, doors banging, and sometimes something heavy being dragged across the floor;
- the noise sometimes involves one single bang and sometimes involves periodic banging for up to 1.5 hours; and
- the Tenant slams the cupboard doors, causing them to “bounce” a few times.

The Witness stated that he has recorded some of the noise disturbances and provided those recordings to the Landlord. The Agent for the Landlord stated that she believes the building manager submitted these recordings to the Residential Tenancy Branch as evidence for these proceedings and that the building manager served them to the Tenant. The Advocate for the Tenant stated that these recordings were not received. The parties were advised that the Recordings have not been uploaded as evidence by the Residential Tenancy Branch. The Agent for the Landlord did not indicate these recordings had been submitted at the start of the hearing, when service of evidence was discussed.

The Tenant stated that she listened to one of the recordings made by the Witness when they met in February of 2019. She stated that she heard two “tapping” noises on the recording.

The Landlord submitted a list that was compiled by the Witness, in which he records times and dates that he was disturbed by the Tenant. The Advocate for the Tenant informed the Witness that the Tenant would have been sleeping on some of the times noted on this list and he responded that the Tenant may have been up using the washroom.

### Analysis

Section 47(1)(d)(i) of the *Act* authorizes a landlord may end a tenancy by giving notice to end the tenancy the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

On the basis of the undisputed evidence I find that on April 02, 2019 the Tenant was personally served with a One Month Notice to End Tenancy for Cause. It is clear from the information in the “Details of Cause” section of the Notice that the Landlord is attempting to end that tenancy pursuant to section 47(1)(d)(i) of the *Act*.

When a landlord wishes to end a tenancy pursuant to section 47 of the *Act*, the landlord bears the burden of proving there are grounds to end the tenancy. After considering all of the written and oral evidence submitted at this hearing, I find that the Landlord has

submitted insufficient evidence to show that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

On the basis of the Witness's testimony and his list of disturbance times, I accept that he is being disturbed by noises emanating from the rental unit at various times of the day.

I find, however, that the Landlord has failed to establish that the noises emanating from the rental unit would significantly interfere with a typical tenant and/or that the noises were unreasonable. In reaching this conclusion I was heavily influenced by the undisputed evidence that the noises typically emanating from the unit include the Tenant opening and closing doors. As these are normal daily living activities, there can be no reasonable expectation that the Tenant would not undertake these activities during her normal waking hours. While I accept that it may disturb the Witness, these are typically noises that must be tolerated in multi-unit residential dwellings.

In adjudicating this matter I have placed no weight on the suggestion that the Tenant is deliberately closing her doors loudly. I have placed no weight on this submission because the Tenant denies the allegation and the Landlord submitted no independent evidence to support that submission.

Where one party submits one version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary or independent evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden. In these circumstances, the Landlord bears the burden of proving that the Tenant is being unreasonably loud.

Although the Agent for the Landlord stated that she thinks the recordings made by the Witness were submitted as evidence, they do not appear to have been submitted to the Residential Tenancy Branch, as they had not been uploaded. Although the Agent for the Landlord stated that she thinks the recordings made by the Witness were served to the Tenant, the Tenant does not acknowledge receiving them. I am therefore unable to rely on those recordings during this adjudication.

I find that these recordings would have given me the opportunity to independently assess the noise levels emanating from the rental unit and would have greatly assisted me in determining whether or not the noise was unreasonable. In the absence of such

recordings, however, I am unable to determine that the noise was unreasonable. I therefore find that the Landlord has failed to meet the burden of proof needed to end the tenancy pursuant to section 47(1)(d)(i) of the *Act*

### Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that the Landlord has grounds to end this tenancy pursuant to section 47(1)(d)(i) of the *Act*, I set aside the One Month Notice to End Tenancy and I order that this tenancy continue until it is ended in accordance with the *Act*.

I find the Tenant's application has merit and I therefore authorize the Tenant to deduct \$100.00 from one monthly rent payment, as compensation for the fee paid to file this Application for Dispute Resolution.

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: May 03, 2019

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Residential Tenancy Branch