



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

The tenant seeks an order cancelling a One Month Notice to End Tenancy for Cause (the “Notice”) under section 47(4) of the *Residential Tenancy Act* (the “Act”).

The tenant applied for dispute resolution on April 29, 2019 and a dispute resolution hearing was held on May 23, 2019. The landlords, the tenant, and a witness for the tenant (who also assisted the tenant during the hearing) attended the hearing, and they were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues with respect to service.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred, but only evidence relevant to the issues of this application are considered.

I note that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlords are entitled to an order of possession if the application is dismissed and the landlords’ notice to end tenancy complies with the Act.

### Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, are the landlords entitled to an order of possession?

### Background and Evidence

The tenancy began approximately five or six years ago, and monthly rent is \$925.00. Recently, the landlords issued the Notice because of noise complaints from an occupant who resides on the floor below (the “downstairs tenant”) the tenant’s rental unit.

The landlords received a total of two complaints from the downstairs tenant regarding noise issues that occurred on March 14 and again April 12-13, 2019.

On March 14, 2019, the downstairs tenant emailed a property manager (who forwarded the email to the landlords) in which they complained about night time noise originating from the tenant’s rental unit. The email reads, in part, as follows (reproduced as follows):

I have been very tolerant for the last two years but I am sorry, I can no longer accept this. From 9pm to 2am EVERY SINGLE NIGHT the children are running through the suite, stomping, jumping as hard as they can, screaming, parents are hollering and not putting them to bed until 2am. It is unacceptable. I am getting NO SLEEP!!! [. . .] As much as I have loved this apartment, this night time routine is destroying my life. The noise level has been worse since early January. [. . .] I hope you can help resolve the noise problem at night. It is totally unacceptable. Last night again the noise went on until 1:20AM.

Four weeks later, on April 13, 2019, the downstairs tenant emailed the property manager again, and her emails reads, in part:

I guess you were not able to get a hold of the owner of suite 201 yesterday...Last night (April 12 into April 13) was noisy again between 10:30pm and past midnight.

The email goes on describe various noise such as talking, jumping, stomping, objects being tossed, banging, “repetitive clicking sounds,” and so forth; the noise occurred between 10:30 PM and 12:25 AM.

Finally, the downstairs tenant sent an email to the property manager on April 16, 2019, in which the downstairs tenant states that

Saturday night [April 13, 2019] was very very bad until 1am. I spent the night in the living room. [. . .] The man was very loud and throwing things (chairs or something like that) and encouraged the kids to run and jump until about 1am. [. . .]

.] For whatever reason they want those kids up past midnight, they all stay in the master bedroom and torture everyone around them at night.

On April 14, 2019, the landlords issued the Notice and served it on the tenant by registered mail. A copy of the Notice was submitted into evidence. Page two of the Notice indicates that the reason for the Notice being issued was because the “tenant or a person permitted on the property by the tenant has [ . . . ] significantly interfered with or unreasonably disturbed another occupant or the landlord.” In the Details of Cause(s) section of the Notice the particulars are as follows: “We have receive [*sic*] three written excess noise complaints about unit 201. Other tenant is disturbed in the middle of the night. Complaints dated March 14, 2019, April 12, 2019 and April 13, 2019.”

There was also submitted into evidence a copy of an email, dated March 9, 2016, from the property manager to the landlord (P.P.). In the email, the tenants (who preceded the downstairs tenants) told the property manager that

the tenants above them have been very loud at all hours of the day and night. They have also been coming down and banging on their door accusing them of smoking in their unit. They are non smokers. They are a little afraid of [M.L.] as he is the one always coming down and they aren’t answering the door anymore if its [*sic*] him.

The landlords submitted that while it is unfortunate that it has come to this (that is, issuing the Notice), their main concern is providing all their tenants with a quiet place to live. The landlord (P.P.) testified that she called and texted the tenant about the noise complaints, but that the tenant claimed it was not her or that it came from her rental unit. Finally, while the landlords sympathize with the issues that the tenant is having with her children, it is “not fair to the other tenants” that the noise issues have not been addressed.

The tenant’s witness testified that kids will be noisy, and especially young kids. Currently, the children—who are 3 years old and 4 years old—are on a waiting list to be tested for autism. The children have issues with noise, and the tenant and the witness (who is the father) are doing their best. Regarding the complaints of March and April, the tenant testified that they were trying to toilet train the children. Unfortunately, once the children are awake it is a challenge to get them to go back to bed. The children want to start playing with their toys and think it is morning.

The witness further testified that their next-door neighbour, whose master bedroom is next to the rental unit's wall, has not complained about any noise. Nor have any other occupants in the building, including their neighbours across the hall or above them.

The tenant and her witness explained that the children through tantrums and are difficult to control. They are difficult to get to sleep. As the witness testified, "[we] put them in their bed and hope they listen."

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

The ground on which the Notice was based is section 47(1)(d)(i) of the Act, which states that a landlord "may end a tenancy by giving notice to end the tenancy if one or more of the following applies: [. . .] (d) the tenant or a person permitted on the residential property by the tenant has (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property."

Based on the evidence, which consists solely of email complaints by the downstairs tenants, I find that being awoken (or kept awake) by the tenant's, the tenant's partner, and the tenants' small children in the late evening and early morning hours of March 14 and again on April 12-13 undoubtedly disturbed another occupant. However, given that life in a multi-unit residential building will inevitably involve the sounds of daily life, being disturbed on two occasions (separated by a period of four weeks) by noisy children is not unreasonable. And, while the downstairs tenant referred to there being a noise issue over the past two years, and to noise issues getting worse since January 2019, there is no evidence of what noise issues existed before the noisy night of March 14.

The only evidence I have of the tenant making noise (that lead to the Notice) are two emails from the downstairs tenant. Had the downstairs tenant testified as to other noise issues, I might have had a baseline on which to determine whether the noise issues were as bad as claimed. Moreover, I note that there are no other complaints by any other resident in the building regarding the tenant or her raucous children.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have not met the onus of proving the ground on which the Notice was issued. As such, I order that the Notice, issued April 14, 2019, is hereby cancelled and of no force or effect. The landlords are not entitled to an order of possession, and the tenancy will continue until it is ended in accordance with the Act.

That having been said, the tenant is cautioned that further noise disturbances, such as the ones that lead to the Notice being issued, may give rise to grounds for future notices to end the tenancy being issued by the landlords.

### Conclusion

I hereby order that the Notice, issued April 14, 2019, is cancelled and of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

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: May 23, 2019

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Residential Tenancy Branch