



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BROWN BROS AGENCIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order cancelling the 1 Month Notice to End Tenancy for Cause (the "Notice") issued by the landlord and for recovery of the filing fee paid for this application.

The tenant, his legal advocate, and the landlord's agent (hereafter "landlord") attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process. The landlord's witness, SL, was present at the inception of the hearing; however, she was excused until her testimony was required, at which time she returned to the hearing. The tenant's witness was excused from the hearing until her participation was required; however, ultimately it was not necessary to hear from the tenant's witness.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

### Preliminary and Procedural Matters

At the outset of the hearing, the landlord said he did not receive the tenant's evidence. In response to my inquiry, the tenant submitted that he delivered his evidence to an agent at the landlord's business office. The landlord did not deny this, but was not sure why he was not given the tenant's evidence.

The tenant submitted that he did not receive the landlord's evidence until June 20, 2019, which was four days prior to the hearing.

I determined that the tenant did receive the landlord's evidence prior to the hearing, although not in the timeframe required by the Residential Tenancy Branch Rules of Procedure (the "Rules"), and had adequate time to review and consider the evidence. I therefore determine it was reasonable to accept the landlord's evidence for consideration.

Additionally, I determined the landlord was provided the tenant's evidence by leaving the documents with an agent of the landlord. I have therefore accepted the tenant's evidence for consideration.

I have reviewed all oral and documentary evidence before me that met the requirements of the Rules and the additional evidence as referred to above; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

#### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice issued by the landlord and to recovery of the filing fee paid for this application?

#### Background and Evidence

The tenant submitted and the written tenancy agreement shows that this tenancy began on March 8, 2014. The evidence shows that the rental unit was in a multi-unit, multi-floor wood frame building, built in 1968. The tenant's rental unit is above the rental unit of the landlord's witness, SL.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenant the Notice. The Notice was dated May 8, 2019, was served to the tenant by attaching the Notice to the tenant's door on that date, according to the landlord, and listed an effective end of tenancy of June 30, 2019. The tenant submitted a copy of the Notice.

The tenant filed his application in dispute of the Notice on May 10, 2019, which I note was within the 10 day timeframe required by the Act.

The cause listed on the Notice alleged 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.

In support of their Notice, the landlord submitted that they have received numerous noise complaints from SL about this tenant. The landlord submitted copies of the written complaints from SL, printed on the landlord's complaint form, dated April, 22, 23, 24, 25, 28, 29, 30, and May 1 and 2, 2019. In addition, the landlord submitted a copy of an email, dated March 7, 2019, from SL.

The consistent complaints were that was that the tenant was walking back and forth during all hours of the night, usually from 11 p.m. until 3 a.m. The complaints also said that the tenant's noise severely affected SL's sleep, which in turn impacted her professional life.

The landlord said that he spoke to the tenant multiple times in April about the noise complaints, but the noise continued. The landlord asked the tenant to "shut it down" during the nighttime, quiet hours.

The landlord said the building was wood frame and people walking can be heard in the building, further saying it was an old building.

In response to my inquiry, the landlord state that the bedroom in the rental unit was hardwood and that the living room and hallway were carpeted.

*Landlord's witness-*

SL said that she hears the tenant every night, from 11 p.m. to 3 a.m. and that it was unfair of the tenants to be up walking when others are sleeping. SL said the tenant seems to be pacing back and forth and has used a blender.

SL said that she first moved in, she worked a night shift, but now has a daytime job, so the noise interrupts her sleep.

*Tenant's response-*

The tenant submitted that when the landlord first approached him in April, he informed the landlord that he was not doing anything differently or out of the ordinary.

The tenant submitted that he and his partner, who I note is a listed tenant on the written tenancy agreement, do not have parties, play music, or have visitors over to their home.

The tenant submitted that he is a very light sleeper, and wakes up and goes to the washroom several times during the night. In addition, his partner has diabetes and goes to the washroom multiple times each night.

The tenant submitted that he hears every sort of noise from his neighbours, such as coughing, sneezing, and snoring. He said that the noises from his neighbours wake him up at night, but that is to be expected from living in an older building. The tenant submitted that he has told different people that if they have trouble sleeping, that the residential property was not the place for them.

The tenant referred to his documentary evidence, which included witness letters. One witness writes that they live in the same building, and that they have heard their neighbors' footsteps and experienced excessive noise, but that is to be expected in an old building. Another witness writes that they used to live in the building, but moved to a quieter apartment. The witness further wrote that the windows in the residential property here rumble when a bus passes and that they heard neighbours walk, talk, take the stairs, when doors are slammed, when dogs bark, and when washer/dryers are running.

### Analysis

Based on the foregoing evidence, and on a balance of probabilities, I find as follows:

Under section 47(1)(d)(i), a landlord may issue to the tenant a notice seeking to end a tenancy if the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, as is the case here.

The landlord bears the burden of proving they have grounds to end this tenancy and must provide sufficient evidence to support the cause(s) listed.

In the case before me, I find the evidence is clear that the complaints of the tenant living below this tenant, SL, deal with the footsteps of the tenants walking down their hallway. I find this is everyday living, which in this case, is in an older, wood frame building. I find the overall evidence strongly supports that the noise complained of by SL is quite common in this building for all tenants, due to the age, character, and composition. I therefore find on a balance of probabilities that the noise is not excessive.

I also relied on the tenant's documentary evidence, which confirms that the residents in the residential property do hear noise from other tenants and from outside, due to the age and character of the building.

I also find no evidence presented that supports the tenants are "stomping" on the floor at night, or any time. The tenants have lived in the rental unit for over five years, apparently with no history of unreasonably disturbing other tenants or SL. The only change is the work schedule of SL.

I further find the landlord cannot regulate the nightly biological urges of the tenants or require them to not use the washroom at night. I find this expectation to be unreasonable and unrealistic.

While I appreciate that the tenants' footsteps may impact the sleeping pattern of SL, I do not find that the landlord cannot change the age, character, and composition of the building. I find that SL's expectation that there be no noise from the tenants during the night or that the tenants not go to the washroom at night, due to her work schedule, to be unreasonable.

Due to the above, I find the landlord submitted insufficient evidence to prove that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated May 8, 2019, for an effective move out date of June 30, 2019, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled and order that the tenancy continue until ended in accordance with the Act.

I allow the tenant recovery of his filing fee of \$100.00, and direct that he deduct this amount from his next or a future month's rent payment in satisfaction of his monetary award. The tenant should inform the landlord when he is making this deduction and the landlord may not serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent when making the deduction.

### Conclusion

I grant the tenant's application seeking cancellation of the landlord's Notice. The Notice has been cancelled with the effect that the tenancy will continue until ended in accordance with the Act.

The tenant is directed to deduct \$100.00 from a future month's rent payment in satisfaction of his monetary award for recovery of 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 *Residential Tenancy Act*.

Dated: June 25, 2019

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Residential Tenancy Branch