



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

The tenants apply to cancel a one month Notice to End Tenancy for cause received June 27, 2019. The Notice alleges that the tenants or persons permitted by them on the premises have significantly interfered with or unreasonably disturbed other occupants. Such a claim, if proven, is a lawful reason for a landlord to end a tenancy under s. 47 of the *Residential Tenancy Act* (the “Act”).

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Have the tenants or their guests significantly interfered with or unreasonably disturbed other occupants of the premises?

### Background and Evidence

The rental unit is a one bedroom apartment in a three floor, 51 unit apartment building. There is a written tenancy agreement. This tenancy started over ten years ago; in November 2008. The current monthly rent is \$876.00. The landlord holds a \$363.00 security deposit.

The tenants are both disabled. Their advocate describes Ms. J.H. as having mobility issues, epilepsy and some brain dysfunction. Mr. E.B. is in “end stage” COPD. He is

on oxygen assistance 24 hours a day. The health authority visits the two tenants each day at the apartment.

Over the last year their rental unit has been the subject of repeated complaints about noise and cigarette smoke. Neither tenant makes much noise and neither smokes, however they have been allowing guests into the rental unit and it appears the guests use the tenants' balcony as a place to smoke.

The landlord files three complaint letters from other tenants in the building. The first letter, dated April 26, 2019 is from Ms. S.C. who lived in the next apartment. She moved out because of the "dangerous" noise coming from this rental unit, which is right next to her bedroom. She objected because the noise continued after 11:00 p.m. and up until 4:00 a.m. sometimes. She lost sleep and missed some work as a result.

The second letter, dated June 26, 2009, is from Mr. B., a tenant on the other side of this rental unit,. He writes to complain of the tenants or their guests keeping him up until 3:00 a.m. on June 22 but coming out and smoking on the balcony every fifteen minutes. He says he has to listen to their TV all night and that he is planning to move because of the noise coming from the rental unit.

The third letter is from a women in a rental unit on the same floor. She also complains about the noise on June 22, saying the level of noise was "unacceptable" and "extremely loud and continuous" until 4:00 a.m. She heard fighting, yelling and crying from the tenants' rental unit.

The resident manager Ms. M.T. attended the hearing and presented her written statement which indicates that complaints about these tenants started in December 2018. The complaints from other tenants were about noise and smoking. The building is a "non-smoking" building but the tenants' rental unit has been "grandfathered." Though neither tenant apparently smokes, their guests are permitted to.

Ms. M.T.'s letter indicates that last Christmas the noise in the tenant's rental unit continued until 4:00 a.m. and that over the next three months she received six or seven complaints from the same tenant (Ms. S.C.) about incessant noise at all hours of the night and early morning. She spoke to the tenant Mr. E.B. at least five times about the noise and she says he agreed it was a problem and that it would not happen again, but it did.

Ms. M.T. writes that on May 1 she was present when the landlord's property manager spoke to Mr. E.B. about his behaviour and that of his guests and the constant complaints. She writes that Mr. E.B. agreed with the property manager that there was a problem and that he was responsible for his guests. Despite that, the complaints continued.

She writes that on June 21, 2019 she witnessed two of the tenants' guests engage in a "screaming match" in front of the building, with another tenant yelling at them from a balcony to stop.

In summary she writes that these tenants have received many, many warnings and made many promises but the noise continues and two more tenants are threatening to leave because of it.

On May 13, 2019 the landlord wrote to the tenants as follows:

We are writing as a follow up to our suite visit on May 1, 2019. As we mentioned during our visit there have been numerous complaints regarding excessive noise and smoke coming from your suite and balcony over the past few months. This bad behaviour has directly caused one of your neighbours to give their notice and move out.

We were very disappointed that, despite our conversation and the numerous verbal warnings you have received from the building manager, we have continued to receive noise and smoke complaints. Much of this is related to you having guests at all hours of the day and night.

One of the rights your neighbours have is the right to peaceful enjoyment of their suite and the behaviour of your guests is severely interfering with this right.

We are sorry to say that this is the last warning we will give you before we issue an eviction for cause. We sincerely hope it doesn't come to that. If you are unable or unwilling to control your guests, we suggest that you stop inviting them in, as they will get you evicted.

Neither tenant testified. Ms. S., the tenants' advocate indicated that the tenant Ms. J.H. was not reasonably competent to testify and Mr. E.B. was stressed and suffered extreme shortness of breath due to his lung condition.

Ms. J.H.'s brother testifies that about one or two years ago she stayed in the rental unit for a couple of weeks. He says that one night at about 2:00 a.m. someone hammered on the wall demanding they shut up, though everyone in the rental unit was asleep. He is aware that over the last eight or nine months people have been coming over to the tenants' rental unit. He says the visitors are a couple doing housekeeping and that though they are up late they are only watching TV. He says he has "read the riot act" to the tenants and their visitors.

It appears that since the Notice there was an incident where a neighbouring tenant complained about noise from this rental unit but was incorrect about the source of the noise.

Ms. S. for the tenants notes that there have been no police incidents. The people who come to the apartment are mostly middle aged and just visit, watching TV. There is no drinking or drugging. The visitors no longer smoke on the balcony.

### Analysis

The ending of a tenancy is a very serious matter. This tenancy is over ten years old. This is the tenants' home. Clear and cogent evidence will be required in order to support and justify the upheaval caused by an eviction.

In this case I find that the landlord has met the onus on it to show, on a balance of probabilities, that the tenants' guests are unreasonably disturbing other tenants in this apartment building.

I am satisfied that in the case of Ms. S.C., the fact that her complaints about disturbance from this rental unit appeared to have made with any results, caused her to vacate.

I understand and appreciated the difficult position the tenants are in, given their physical and medical conditions. It may be, as Ms. S. suggests, the tenants are passive people but that is no answer to the tenants suffering the disturbances. The fact remains the tenants are responsible for their guests. That has been made known to them and still the disturbance continued.

### Conclusion

The landlord has established valid grounds for the Notice. I dismiss the tenants' application to cancel the Notice. As a result of the Notice this tenancy ended on July 31, 2019 and so the landlord will have an order of possession.

Despite this decision the parties are free to negotiate an agreed resolution of this matter for a continuation of the tenancy. Perhaps as a start to the negotiation for such a settlement, the tenants might offer to agree that their rental unit, including the balcony, become a no smoking area and that they will not have any guests after a certain hour.

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: September 23, 2019

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Residential Tenancy Branch