



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Lezam International (610) Inc. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause dated July 17, 2019. Both parties appeared or were represented at the hearing and were provided the opportunity to be make relevant submissions, present relevant evidence, and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I confirmed the parties had exchanged their respective hearing documents and evidence upon each other. I explained the hearing process to the parties and permitted the parties the opportunity to ask questions. I affirmed the parties.

It should be noted that after two hours of hearing time, the landlord had presented its case against the tenant and the tenant and her sister had finished responding to the landlord's submissions and evidence. I informed the parties that the hearing time had expired and I recognized that the landlord had not yet been given the opportunity to rebut to the tenant's responses. Rather than adjourn the proceeding, the landlord's agent stated they sought a decision sooner than later and requested a decision be based on the submissions and evidence presented to this point. Both parties were given an opportunity to summarize their position, which I recapped, and the teleconference call was ended.

### Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy for Cause ("1 Month Notice") dated July 17, 2019 be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?

### Background and Evidence

The tenancy commenced on January 1, 2017. After a fixed term of one year, the tenancy continued on a month to month basis. The tenant is required to pay rent of \$1,172.60 on the first day of every month. The rental unit was described as an apartment in an older, 16 unit apartment building. There is an on-site manager who deals with day to day tenancy matters and a property manager that oversees management of the building. The on-site building manager occupies a unit on the third floor of the building and the rental unit is located on the second floor.

On July 17, 2019 the property manager issued the subject 1 Month Notice to the tenant with an effective date of August 31, 2019. The 1 Month Notice, along with an attached document entitled "Details of Cause" was posted to the tenant's door on July 17, 2019 and sent to the tenant via registered mail. The tenant received the 1 Month Notice posted to her door but did not pick up the copy sent via registered mail. The filed to dispute the 1 Month Notice within the time limit for doing so.

On the second page of the 1 Month Notice, the landlord indicated the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- Breach of a material term that was not corrected within a reasonable time after written notice to do so.

The landlord provided the "Details of Cause" on a separate page attached to the 1 Month Notice. The "Details of Cause" document has four points although the issues boil down to two matters that I summarized as follows:

1. Excessive noise, especially during late night and early morning hours (11:00 p.m. - 4:15 a.m.), that includes loud music and the sound of loud hammering and banging that has unreasonably disturbed other occupants and a violation of the tenancy agreement.
2. Denying the landlord entry into the rental unit to conduct an inspection on July 16, 2019 despite giving the tenant a notice of entry dated July 12, 2019.

## **Landlord's position**

The building manager testified that she personally heard excessively loud noises coming from the rental unit, including banging noises that were so intense the floor was vibrating. The building manager described witnessing this in the afternoon of June 24, 2019. In response, the building manager knocked on the tenant's door, but the tenant did not answer the door. The building manager then sent an email to the tenant at 3:38 p.m. concerning the loud noises. The tenant responded to the manager, via text messaging, acknowledging she was dealing with annoying nails, she was hanging pictures and getting in a workout.

The building manager testified that on June 27, 2019 between 10:58 p.m. on 1:30 a.m. she was awoken by the sounds of hammering and banging. The building manager walked through the building and determined the noises were coming from the rental unit. The building manager knocked on the door of the rental unit but there was no answer.

On July 8, 2019 the annual fire inspection was set to take place in all the units of the building. The building manager had emailed the tenant the notice for the inspection because she had emailed the tenant notices of entry in the past after the tenant requested she do so. However, on July 8, 2019 when the building manager knocked on the door the tenant denied receiving the emailed notice. The building manager retrieved a copy of the email sent to the tenant to show the tenant she had sent it to her, but the tenant still declined to permit entry to the building manager or fire contractor. The landlord provide a copy of the contractor's report of the inspection to demonstrate every unit except the tenant was accessed on July 8, 2019.

The building manager testified that in the early morning hours of July 10, 2019 (12:30 am. – 2:00 a.m.) she heard hammering and banging noises coming from the rental unit again and she posted a warning notice on the tenant's door on July 10, 2019. The same noises were heard between 11:00 p.m. and 12:00 a.m. on July 11, 2019. On July 12, 2019 the hammering and banging noises were heard again between 12 a.m. and 1:30 a.m. and on July 12, 2019 the building manager posted another warning notice on the tenant's door. The hammering and banging noises were heard once again on July 13, 2019 between 3:30 a.m. and 4:15 a.m.

The building manager testified that had also received oral complaints from the other tenants concerning excessive late night noises coming from the rental unit and disturbing them.

The property manager decided that a unit inspection was appropriate and on July 12, 2019 a notice of entry was posted to the rental unit door for an inspection set to take place on July 16, 2019.

The property manager testified that she decided to hire a bailiff to accompany her to the inspection because she was dealing with a tenant she had no prior dealing with in the past and the property manager wanted to protect herself.

On July 16, 2019 the property manager, in the accompaniment of the bailiff, knocked on the rental unit door. According to the property manager the tenant appeared at the door wearing a "go pro" on her head and holding her cell phone to record the audio of the encounter. The tenant also stated orally that she was recoding the encounter. The property manager stated that the tenant questioned the reason for the inspection. The property manager informed the tenant the landlord may do a monthly inspection under the Act and that they were inspecting all units but that her unit was the first one selected. The property manager asked whether the tenant was permitting the entry or refusing entry. According to the property manager the tenant declined to permit entry and the property manager was not going to barge past the tenant to gain entry.

The following day the property manager issued the 1 Month Notice.

After issuing the 1 Month Notice, the building manager received several more noise complaints concerning the sound of banging and hammering coming from the rental unit that were disturbing to the other tenants, including loss of sleep; and, the building manager received a complaint from another tenant that the tenant had confronted her in the common area while attempting to retrieve a pizza from the pizza delivery person. The confrontation involved the tenant recording the other tenant as they travelled through the common areas and the tenant asking this person whether they lived in the building or spoke English.

The landlord pointed out that the noise complaints against the tenant started around the time the tenant had complained to the landlord about another tenant repeatedly hacking into her internet router, modem and electronic devises. The tenant had made this complaint on June 22, 2019 and the property manager had responded on June 26, 2019 suggesting the tenant pursue a criminal matter with the police.

The landlord requested an Order of Possession as soon as possible considering other tenant's quiet enjoyment is being adversely affected and the landlord has had to provide another tenant with a rent reduction due to the disturbances caused by the tenant.

The landlord provided copies of the tenancy agreement; handwritten notes of the building manager used to record noises she heard on various dates; the two noise complaints issued to the tenant on July 10, 2019 and July 12, 2019; the fire inspection report of July 8, 2019 showing entry was not accomplished in the rental unit; the notice of entry of July 12, 2019; an emailed statement of the bailiff hired to accompany the landlord on July 16, 2019; the tenant's complaint of June 22, 2019; an email from the building manager and property manager regarding the report of a confrontation on July 18, 2019; and, several emailed complaints from other tenants after the 1 Month Notice was issued.

### **Tenant's position**

The tenant was of the position that the landlord's evidence was largely fabricated and manufactured in an attempt to evict her without cause. The tenant submitted that she has had no issues with the landlord in the past and is a good and quiet tenant. As for the landlord's motivation to fabricate and manufacture evidence against her, the tenant did not suggest any reason for the landlord to do so except to submit that the landlord has one set of rules for her and different rules for every other tenant. The tenant also suggested that her complaint of June 22, 2019 may be motivation for the landlord to evict her.

The tenant denied creating the excessive noises that she has been accused of making or confronting another tenant. The tenant acknowledged that the building manager emailed her on June 24, 2019 to enquire about the hammering/banging noises and music and that she did respond to the landlord via text message. The tenant explained that the floors are very old hardwood flooring and nails occasionally need to be hammered down.

The tenant also acknowledged receiving the two noise warnings that were posted on her door; however, the tenant stated she did not receive the warning letters until the early morning hours of July 13, 2019 because she had been away.

The tenant testified that she did not learn of the excessive noise allegation of June 27, 2019 until she received the landlord's evidence package. The tenant stated she had no knowledge of loud noises on June 27, 2019.

As for the alleged noises that took place on July 10, 2019 through July 13, 2019, the tenant stated she was not home on these dates. Upon enquiry as to where she was, the tenant merely stated that she was staying at a friend's house in a nearby city. The tenant testified that there was nobody else was staying in her rental unit between these dates. The tenant also submitted that she posted the noise complaints onto the building manager's door in the early morning hours of July 13, 2019 at around the same time the building manager alleges the tenant was making loud noises in her unit.

The tenant was of the position that all of the complaints against her are originating from one person: the girlfriend of the tenant living in the unit above her. When it was put to her that the complaints also included a tenant living beside her and the building manager the tenant acknowledged the evidence includes complaints from three different parties. The tenant took the position that the landlord must have requested that other tenants make written complaints against her about noise, even if the noise is as quiet as a whisper.

The tenant was also of the position that the landlord's evidence contains many "inconsistencies". The tenant submitted that the "inconsistencies" included:

- the building manager not taking action to deal with noise from a party taking place in another unit on September 21, 2019 yet the landlord is trying to evict her for noise;
- the landlord hiring a bailiff on July 12, 2019 yet she had only heard of one noise complaint against her, on June 24, 2019;
- The landlord issued the notice of entry on July 12, 2019 yet the alleged confrontation was on July 18, 2019 so the property manager had no reason to have safety concerns and hire a bailiff and the landlord's timelines do not match up; and,
- the bailiff wrote in his emailed statement that the tenant had been resisting communication with the landlord when that was not true;

As for the entry set to take place on July 16, 2019 the tenant was of the position the landlord gave her the option to allow or deny entry and the tenant understood that if she declined to permit entry the landlord would return on another date to do an inspection. The tenant acknowledged wearing the "go pro" and recoding the encounter with her cell phone. The tenant stated that she denied entry to the landlord because she felt intimidated by the presence of the bailiff and because she received advice from

her “privacy lawyer” to not permit entry until her unit has been secured. The tenant also denied entry because she the landlord had lied to her in stating other units were also getting inspected.

The tenant took issue with the landlord wanting to inspect the unit and the landlord’s reason for doing so. The tenant stated she had asked other tenants if they were getting inspected and they were not. I informed the tenant that under the Act, the landlord does have the right to inspect the unit monthly, with proper notice. The tenant responded by stating she is willing to permit an inspection.

During the hearing and by way of the tenant’s written submission, she sought to introduce evidence with respect to her position that her router, modem and electronic devices have been “hacked” by the tenant in the unit above hers. I cautioned the tenant that unless the evidence is relevant to the matters before me, I would not hear about the hacking. The tenant was of the position that the “hacking” of her devices was relevant but could not clearly describe how it was relevant except to point out that her complaint of hacking was at approximately the same time noise complaints started against her.

In speaking with the tenant and her sister, I suggested that her various positions of sophisticated levels of hacking, fabricated and manufactured evidence had a ring of paranoia. The tenant and her sister denied the tenant was paranoid and did not indicate there was any mental illness involved in this case.

The tenant’s evidence included copies of her complaint to the landlord on June 22, 2019 concerning the allegation of a sophisticated level of “hacking” of her electronic devises; photographs the two noise complaints the tenant posted on the door of the building manager’s unit with the notation that she was not home during those dates; emails from the building manager scheduling inspections in April and May 2017; and, photographs of her rental unit door and the door of the adjacent unit.

The tenant was of the position her tenancy should continue since the evidence against her is false and that she was not given sufficient notice concerning noise issues.

### Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice. The burden of proof is based on the balance of probabilities.

One of the reasons for ending the tenancy, as indicated on the 1 Month Notice, is provided under section 47(1)(d) of the Act. It provides that a landlord may end a tenancy where a tenant has unreasonably disturbed or significantly interfered with another occupant or the landlord. This provision serves to provide a landlord a mechanism to end a tenancy if that tenant is causing the other occupants of the building to lose quiet enjoyment of their living accommodation. A landlord is obligated to protect their tenants' right to quiet enjoyment of their rental unit and the residential property under section 28 of the Act. Section 28 provides that every tenant is entitled to freedom from unreasonable disturbance or significant interference with their use and enjoyment of their rental unit and the residential property. If a tenant's right to quiet enjoyment is being breached due to actions of another tenant, the landlord is expected and obligated to take sufficient action to cease such offending behavior and that may include eviction of the tenant causing the disturbances.

In this case, the landlord has asserted the tenant is responsible for causing excessive loud noises on several occasions that are unreasonably disturbing other occupants of the building, especially when they occur late at night or in the early morning hours, despite written warnings. The tenant denied causing these noises, with the exception of June 24, 2019, or that she permitted anyone in her unit during the subject dates/times put forth by the landlord. Accordingly, it is before me to determine whether the landlord has sufficient proven, based on a balance of probabilities, that the tenant is responsible for unreasonable disturbance or significant interference of other occupants or the landlord.

The building manager provided direct and mostly clear testimony as to what she heard at particular dates and times and the efforts she made to determine the noise was coming from the rental unit. The building manager's testimony was consistent with the events the tenant acknowledged on June 24, 2019 and bolstered by the two warning letters issued by the building manager on July 10 and 12, 2019. To contradict the building manager's evidence concerning events that took place between July 10 and 13, 2019, the tenant claimed she was not home on these dates; however, the tenant did not provide detail as to who she was staying with, such as a name and address, and did not call this person as a witness to corroborate the tenant's version of events. Nor, did the tenant provide any other evidence to demonstrate she was staying elsewhere for those four days. The landlord also provided several noise complaints written by other tenants. Although the noise complaints are dated after the 1 Month Notice was issued, I find that they provide support to the building manager's testimony as to the types of sounds she was hearing and that they were frequently late at night or in the early morning hours.



These things considered, I find on a balance of probabilities that I prefer the landlord's evidence that during dates of July 10 -13, 2019 the rental unit was occupied by the tenant, or someone permitted by the tenant, and the tenant is responsible for the noise during those dates as described by the building manager.

While the tenant suggested the complaints are from one person, that is not accurate. The noise complaints come from two other units and the building manager for a total of three other units that have heard excessively loud banging and hammering late at night or in the early morning hours. Despite the tenant's suggestion that the landlord has requested others make noise complaints for even the slightest sound coming from her unit, I find the nature of the complaints do not reflect minor or reasonably ordinary noises one would expect late at night or early morning hours. Rather, the multiple emails describe hammering or banging on the wall or ceiling of the rental unit so loud the sounds are not sufficiently drowned out by earplugs and are impacting the other tenant's sleep and general enjoyment of their unit. Further, in reading all of the noise complaints, I do not believe they represent fabrications as suggested by the tenant and appear to reflect various significant disturbances resulted in very frustrated tenants.

As for the tenant's position that she had not been given enough notice that she was creating too much noise, I am of the view that the loud noises were intentional on her part, done with a view to get the attention of another tenant and likely retaliatory for what she perceives is a privacy breach by another tenant given the timing of the her complaint regarding "hacking" and the start of the noise complaints. Despite the tenant's assertion that she did not receive very much notice that the landlord believes she is responsible for loud noises, I note that the tenant has received an email from the landlord on June 24, 2019; two notices posted to her door, on July 10 and 12, 2019; and, the 1 Month Notice posted on July 17, 2019 and the landlord continues to receive the same type of complaints concerning loud hammering and banging coming from the tenant's unit late at night or early morning hours. This leads me to conclude that even with more notice, such offending behaviour will not cease.

As for the landlord's attempts to enter the unit to inspect the unit on July 16, 2019, I find the landlord's decision to inspect the unit completely justified. While a landlord does not require a reason to inspect a unit monthly, since section 29 of the Act permits this, the fire inspection did not take place on July 8, 2019 and the landlord was receiving several complaints of very loud hammering and banging sounds coming from the unit. A landlord has the right and obligation to protect and preserve the property and inspections provide the landlord the mechanism to do so. Where a tenant has been given a proper notice of entry, the tenant must not interfere with the landlord's efforts to

inspect the unit and if the tenant does that may be a basis to find the tenant is interfering with the landlord's lawful rights under the Act and a basis for ending the tenancy. In this case, the landlord served the tenant with a proper notice of entry and the tenant did not permit the entry which is an interference with the landlord's lawful right under the Act.

In light of all of the above these circumstances, I find it is appropriate to end the tenancy so as to protect the quiet enjoyment of the other occupants in the building and facilitate the landlord's obligation to protect its other tenants and its property. Therefore, I uphold the 1 Month Notice and I dismiss the tenant's application.

I proceed to consider whether the landlord is entitled to an Order of Possession. Section 55(1) of the Act provides as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I have upheld the 1 Month Notice and dismissed the tenant's application to cancel it. I have reviewed the 1 Month Notice and I am satisfied it is in the approved form and was duly completed. Accordingly, I find the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession.

With this decision, I provide the landlord an Order of Possession effective seven (7) days after it is served upon the tenant.

### Conclusion

The tenant's application is dismissed.

The landlord is provided an Order of possession effective seven (7) days after it is served upon 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: October 02, 2019

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Residential Tenancy Branch