



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DOWNTOWN SUITES LTD  
and [tenant name suppressed to protect  
privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

On January 2, 2020, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a One Month Notice to End Tenancy for Cause dated December 20, 2020, (“the One Month Notice”).

The matter was scheduled as a teleconference hearing. The Landlord’s agents (“the Landlord”) and the Tenant appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

- Does the Landlord have sufficient cause to end the tenancy for breach of a material term of the tenancy agreement?

### Background and Evidence

Both parties testified that the tenancy began on December 15, 2016, as a one-year fixed term tenancy that continued thereafter on a month to month basis. The rental unit is a two-bedroom condominium managed by a building strata company. Rent in the amount of \$2,570.00 is due by the first day of each month. The Tenant paid the Landlord a security deposit of \$1,175.00. The Landlord provided a copy of the tenancy agreement and nine-page addendum. The addendum indicates that the Tenant signed

form K agreeing to comply with the bylaws and rules of the strata corporation. The Landlord provided a copy of form K. The Tenant acknowledged that he signed the form K.

The Landlord served the One Month Notice to the Tenants. The Notice has an effective date (the date the Tenant must move out) of January 31, 2020.

The Landlord selected the following reason for ending the tenancy within the One Month Notice:

*Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so.*

The One Month Notice provides information for tenants who receive the Notice. The Notice states that a tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant received the One Month Notice on December 27, 2019 and disputed the One Month Notice on January 2, 2020, within the required time frame.

During the hearing, the Landlord testified that they received a noise bylaw infraction involving the Tenants that occurred on November 2, 2019 at 3:32 a.m. The Landlord testified that the Tenants were creating excessive noise in the unit and were not answering the door.

The Landlord testified that the building strata gave the Landlord a bylaw infraction notice on November 7, 2019 and the Landlord then forwarded the notice to the Tenants on November 13, 2019 requesting a response. The Landlord testified that the Tenants did not respond to the bylaw infraction notice.

The Landlord provided a copy of a notice of bylaw infraction dated November 7, 2019. The Notice indicates that the strata council received several complaints by phone and in writing that on November 2, 2019 the Tenants were creating loud disturbances which caused a nuisance to other residents of the building. Specifics of the noise include loud music and yelling. The Notice provides the following:

*The strata council requests that you refrain from creating loud disturbances in your strata lot so as to not disturb the quiet enjoyment for other residents.*

The Notice indicates that the alleged complaint is in violation of bylaw 3 Use of Property

- (1) An owner, tenant, occupant or visitor must not use a strata lot, the common property, common assets in a way that
  - (a) *causes a nuisance or a hazard to another person*
  - (b) *causes unreasonable noise*
  - (c) *unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot.*

The Landlord testified that the noise complaint of November 2, 2019 was also discussed at a strata council meeting held in November 2019.

The Landlord testified that no further correspondence regarding the noise violation on November 2, 2019 was sent to the Tenants.

The Landlord testified that when no response was received from the Tenants, the owner of the condominium directed them to issue the One Month Notice.

The Landlord testified that this is the second bylaw infraction for noise that has been sent to the Tenants. The Landlord testified that there was a noise complaint in October 2018 and a bylaw infraction notice was sent to the owner and provided to the Tenants. The Landlord provided a copy of a notice of bylaw infraction dated October 8, 2018.

The Landlord also submitted that the Tenants also breached a bylaw when they performed an unscheduled move in September 2018 and are responsible for another infraction related to short term rentals in July 2019.

In response to the Landlord's testimony, the Tenant provided testimony acknowledging that he had people over in the rental unit on November 2, 2019. The Tenant testified that he did not hear someone knock on his door and does not believe that to be true. The Tenant testified that other occupants on the same floor of the building were having parties so it would be difficult to determine where the noise was coming from.

The Tenant testified that he received the notice of bylaw infraction via email and he did not have an opportunity to respond to it in time.

In response to the previous notice of bylaw infraction for noise, the Tenant testified that he provided a response to the strata council and never heard anything further. He testified that he was not responsible for the noise allegation.

In response to the unscheduled move, the Tenant testified that he believes the allegation is true; however, it was only bags and clothes that were being moved.

The Tenant testified the rent for March 2020 has been paid to the Landlord.

### Analysis

Residential Tenancy Branch Policy Guideline #8 Unconscionable and Material Terms is intended to help the parties to an application understand issues that are likely to be relevant. The Guideline provides;

*A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.*

*To end a tenancy agreement for breach of a material term the party alleging a breach - whether landlord or tenant - must inform the other party in writing:*

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

*Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.*

In the matter before me, the Landlord has the onus to prove that the reason for ending the tenancy are sufficient and valid. Based on the evidence and testimony before me, I make the following findings:

I find that the Tenants signed the tenancy agreement and addendum agreeing to comply with the bylaws and rules of the strata corporation. I find that the Tenants are responsible to comply with the bylaws and rules of the strata corporation. I find that the Tenants had over one month to respond to the allegation prior to when the One Month

Notice was issued but they did not provide any response. It is reasonable to expect that the Tenants would respond if they believed they were not responsible.

I find that it is more likely than not that the Tenants are responsible for noise that occurred on November 2, 2019 at 3:32 a.m. The Tenant acknowledged that he had people over that evening. I find that the Tenants are responsible for a strata bylaw infraction regarding noise.

I have considered whether or not the strata bylaw infraction is a breach of a material term of the tenancy. After reviewing the tenancy agreement and addendum, I find that there is no specific language that provides a bylaw infraction for noise is to be considered a material breach of the tenancy. I find that making noise or receiving a bylaw infraction for noise is not a material term of the tenancy agreement.

I have considered whether or not the Landlord treated the bylaw infraction as a breach of a material term of the tenancy. I find that the Landlord did not provide written notice to the Tenants in writing about a material breach of the tenancy agreement or strata rules regarding noise.

While I accept that the Tenants received a previous notification regarding noise in 2018, the Tenant submitted at the hearing that they were not responsible for that allegation.

I note that the bylaw infraction notice makes no mention that noise is considered a material term. The Notice provides "*The strata council requests that you refrain from creating loud disturbances in your strata lot so as to not disturb the quiet enjoyment for other residents.*"

While I find that a bylaw infraction for noise may not be a material term or breach of this tenancy, I find that it is behavior that the Landlord can rely on to justify ending the tenancy. I remind the Tenants that they need to comply with the terms and conditions of their tenancy agreement and comply with the bylaws and rules of the strata corporation. The Tenants are cautioned that any further bylaw infractions for noise, or other bylaw infractions, may result in the Landlord issuing a One Month Notice to End Tenancy for Cause and be found to be sufficient to justify ending this tenancy.

With respect to the other issues / infractions raised by the Landlord, I find that the allegations of those incidents occurred months ago; the Landlord did not take steps at that time to end the tenancy, and there is no evidence before me that the reported behaviour continued.

I find that the Landlord has not provided sufficient evidence that the Tenants have breached a material term of the tenancy; therefore, I cancel the One Month Notice to End Tenancy for Cause, dated December 20, 2019.

I order the tenancy to continue until ended in accordance with the Act.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. While the Tenants are successful in having the One Month Notice set aside, I find that they are not blameless in their behaviour. For this reason, I decline an order for the Landlord to repay the cost the Tenants paid for the filing fee.

### Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated November 20, 2019, is cancelled.

The tenancy will continue until 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 *Residential Tenancy Act*.

Dated: March 06, 2020

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Residential Tenancy Branch