



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing was convened in response to an application by the Tenant for an order cancelling a notice to end tenancy pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the notice to end tenancy valid for its stated reason?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

### Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement started on October 3, 2013. Rent of \$426.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$458.00 as a security deposit. The Landlord served the Tenant with a one month notice to end tenancy for cause (the “Notice”). The Notice sets out that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord or has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The Landlord states that the Notice was posted on the unit door on March 12, 2020. The Landlord provides a witness statement of this service. The Tenant states that it did not learn of the Notice until March 20, 2020 when the Landlord sent the Notice to the tenant by email. The Tenant states that one of her children had removed the Notice package from the door and put it in a pile of other materials without informing the Tenant. The Tenant made its application on March 28, 2020.

The Landlord states that the Tenant has been disturbing other tenants since 2017 and that while a previous notice to end tenancy was given to the Tenant on May 28, 2019 for these disturbances it was subsequently rescinded by the Landlord.

The Landlord states that since rescinding the previous notice the Tenant has again significantly interfered with or unreasonably disturbed other tenants with noise from inside the Tenant's unit. The Landlord states that the other tenants complained about yelling, swearing and the use of obscenities by the Tenant towards the Tenant's children. The Landlord provides three letters to support the reason for the Notice. One tenant who lives in the unit next to the Tenant sent a letter to the Landlord dated February 6, 2020 and March 11, 2020. Another tenant who lives on the level above the but not over the Tenant's unit send a letter dated February 20, 2020. The Landlord states that the next-door tenant feels anxiety and that its children are affected. The Landlord states that this tenant does not feel safe because of the yelling and screaming. The Landlord states that the upper tenant informed the Landlord that while the noise stopped for a bit it continued and this tenant wants peace. The Landlord states that it has witnesses in relation to the complaints made prior to the rescinding of the previous notice to end tenancy. The Landlord does not wish to call these witnesses as they only have evidence in relation to the history leading up to the rescinded notice.

The Tenant submits that since 2017 there were 13 total complaints and that only 3 of those complaints are recent. The Tenant submits that it does not have a good relationship with the tenants who made those complaints. The Tenant states that it

does not swear at its male children, aged 12, 13 and 15 years. The Tenant states that it has been her children who are doing the swearing and yelling and that over the past years there have been no complaints as the children's behavior has improved through support work with a social worker, counselling, outreach and church activities, air cadets, music and marital arts. The Tenant argues that the recent complaints are vague and non-specific, with one complaint only referring to what that person was told with no reference to dates or timelines. The Tenant states that this complaint is not based on current events. The Tenant states that the next-door tenant only made its complaint after the Tenant raised concerns with this tenant making noise. The Tenant states that the Landlord's letters are inaccurate and contain falsehoods. The Tenant states that there have been past issues and that since then the Tenant has been "walking on eggshells". The Tenant argues that the claims by the two tenants are exaggerated and only started because the Tenant complained about the next-door tenant making noise.

The Landlord states that they have no evidence of noise from the Tenant's children and only evidence of the Tenant yelling and screaming. The Landlord states that the Tenant took responsibility for its behavior in a note to the board of directors. The Tenant submits that the children's voices are similar to the Tenant's voice given their age. The Tenant argues that the Landlord has no evidence other than from two disgruntled tenants. The Landlord seeks an order of possession for June 30, 2020.

### Analysis

Section 47(d)(i) and (ii) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, or
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Given the evidence that the Landlord rescinded the previous notice to end tenancy I find on a balance of probabilities that the issues then were not significant or unreasonable at the time and therefore cannot now be considered in retrospect as significant or unreasonable. I also consider that there is no evidence of any problems from the time that the Landlord rescinded the previous notice until the recent complaints by the two other tenants. This evidence however is vague, without detail or dates and refers to knowledge of historic noise from a 3<sup>rd</sup> party only. I note that the one tenant's complaint sets out that the walls between the unit are "very thin" and that it may be that the Landlord is contributing to the problems by not providing housing suitable for the privacy requirements under the Act.

The Landlord did not provide any evidence of any other complaints after the previous notice was rescinded. I also consider that any noise that was generated came from youth and that the other tenant who complained also had a youth that slammed a door in the unit repeatedly. This indicates some level of tolerance in relation to noise from youthful behavior from which I find on a balance of probabilities that similar behavior or noise from the Tenant's children is not evidence of unreasonable or significant disturbance. Overall, I find on a balance of probabilities that the Landlord has not provided sufficient evidence of significant interference or unreasonable disturbance or serious jeopardy caused by the Tenant. The Tenant is therefore entitled to a cancellation of the Notice and the tenancy continues.

### Conclusion

The Notice is cancelled, and the tenancy continues.

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 25, 2020

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Residential Tenancy Branch