



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT

### Introduction

On March 20, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing with K.M. The Landlord attended the hearing with S.Z. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing and evidence package by registered mail on March 26, 2020 and the Landlord confirmed that this package was received. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package. I have accepted this evidence and will consider it when rendering this decision.

The Landlord advised that he served his evidence by Xpresspost to the Tenant on May 5, 2020. The Tenant confirmed that she received this evidence and that she could view the digital evidence. Based on this undisputed testimony, I am satisfied that the Tenant was served the Notice of Hearing and evidence package. I have accepted this evidence and will consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I

must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on December 1, 2015. Rent is currently established at \$1,650.00 per month and is due on the first day of each month. A security deposit of \$800.00 was also paid. A copy of the tenancy agreement was not submitted as documentary evidence.

The Landlord advised that the Notice was served to the Tenant by hand on March 20, 2020 and the Tenant confirmed that she received this Notice. The reason the Landlord served the Notice is because the “Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.” The Notice indicated that the effective end date of the tenancy was April 21, 2020.

The Landlord advised that the downstairs tenant moved in on November 30, 2019 and immediately went on holidays for about a week and a half. However, when he returned, he started to complain to the Landlord about noise issues, mainly heavy footsteps, coming from the upstairs rental unit. These complaints occurred almost weekly and he talked to the Tenant about these issues, but they were not resolved. He stated that the downstairs tenant works at night and as he had been unable to sleep during the day, this affected his mental well-being. The Landlord advised that it is “hard to say” if the issues have been resolved after service of the Notice. He also stated that he had never received any complaints about the upstairs Tenant prior to this.

S.Z. advised that she is not happy as she had responded to the downstairs tenant's complaint of a noise issue and talked to the Tenant about it. However, in response, the Tenant had a party the next day. She stated that the tenants should all work together to live peacefully in the property, and she questioned why the Tenant would have the party after the warning. They played two recordings from YouTube that the downstairs tenant allegedly recorded demonstrating the noise issues; however, while some noise was heard, it was difficult to truly hear anything of what was happening or what the noise was.

The Landlord advised that the downstairs tenant attempted to bring his concerns with noise up with the Tenant, but the "thumping of footsteps" only increased. He referenced numerous emailed complaints from the downstairs tenant and attempted to meet with all parties on March 3, 2020 to resolve these differences. He acknowledged that he did not make any attempts to investigate the nature of the downstairs tenant's complaints of noise issues, but it is his belief that the Tenant is deliberately trying to annoy the downstairs tenant. He cited his documentary evidence submitted to support this position.

K.M. advised that the flooring in the rental unit is made of laminate and they do not wear their shoes around the unit. There are carpets in all the bedrooms, but they make efforts not to make any excessive noise in any of the rooms. She stated that they have never received any complaints of any noise issues in the past five years of living in the rental unit and she questioned the reasonableness of the downstairs tenant's claims as he had often made complaints of noise issues at night; however, this should not generally have affected him as he would have been away at work. Furthermore, he made outlandish and unsubstantiated claims of his unit being entered into by the Tenant.

She questioned the relationship between the downstairs tenant and the Landlord as it is not clear why the Landlord would thank him for the written complaints of noise issues. However, it is suspicious that there was mention of the Landlord acknowledging being able to potentially rent the upstairs unit for more money than the Tenant was currently paying. In addition, to support this, the Landlord recently posted ads for the rental unit for a substantially higher amount of rent. She stated that on one occasion, S.Z. called the Tenant to discuss the noise complaints and S.Z. was immaturely and unprofessionally screaming into the phone. She also questioned why the downstairs tenant did not attend a scheduled meeting with all the parties to attempt to discuss the noise issues or why he did not attend the Dispute Resolution proceeding if these were legitimate complaints. Finally, they have had issues in the past with noise from the downstairs tenant but had lived with those as being normal when sharing a space with

another person. However, when they eventually raised their complaints to the Landlord, the Landlord did nothing to investigate these issues. Moreover, the Tenant invited the Landlord over to listen to any issues of noise so that he could witness for himself if there were any legitimate concerns; however, the Landlord declined to do so.

S.Z. advised that four tenants have moved out of the downstairs rental unit in the five years that the Tenant has lived upstairs, and she questioned why they moved. She suggested that they all moved because of unreasonable noise caused by the Tenant; however, this is directly contradictory to their earlier testimony that they had never received any complaints of any noise issues prior to the current downstairs tenant moving in. She speculated that this was due to these outgoing tenants not wanting to bring up these issues at all.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

#### ***Landlord's notice: cause***

**47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

*(d) the tenant or a person permitted on the residential property by the tenant has*

*(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.*

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to

provide sufficient evidence over and above their testimony to establish their claim. As such, the onus is on the party issuing the Notice to substantiate the validity of the reason for service of the Notice.

With respect to the reason on the Notice, when living in a shared property, it would be expected that some level of general noise should be anticipated, and the parties should be prepared that this would be the case. However, if the level of noise experienced becomes unreasonable or excessive, then a tenant would have a legitimate concern that should then be raised to the Landlord. If the Landlord believes that the Tenant is behaving in a manner that is detrimental to the tenancy, the Landlord should warn the Tenant in writing so that the Tenant is aware that there is a problem and would then have an opportunity to correct the issues.

While the Landlord has made attempts to address these complaints from the downstairs tenant with the Tenant, I find it important to note that it is incumbent upon the Landlord to investigate the nature of these complaints to determine if there truly is excessive or unreasonable noise, or if the downstairs tenant is being excessively sensitive to routine, every day noise that would be associated with sharing a common property. In this case, the undisputed evidence is that the Landlord has not made any attempts to investigate the legitimacy of the downstairs tenant's complaints and has simply taken those at face value.

Furthermore, if the downstairs tenant had legitimate complaints about excessive or unreasonable noise, I find it curious why he would not attend a meeting set up by the Landlord with the Tenant to discuss and address these issues. Moreover, while S.Z. attempted to suggest that previous tenants had moved due to noise issues from the Tenant, I find that this insinuation flies directly in the face of their testimony that they had never received any prior complaints from any tenants that had lived there in the past five years. I find this speculative and suggestive submission to be contradictory to their solemnly affirmed testimony. I also find this to be a suspicious attempt to portray an entirely different scenario, and as a result, to be completely baseless and unfounded.

As the onus is on the Landlord to prove that the Tenant acted in a manner to warrant service of the Notice, I find that the Landlord has provided insufficient evidence that he investigated the issue to determine the legitimacy of the complaints that resulted in his service of the Notice. In addition, the testimony provided does not support the validity of any alleged issues but supports my finding that the Landlord has not done any due diligence in his role as a Landlord and simply concocted reasons in attempt to justify the Notice without investigating sufficiently.

As such, I find that the Landlord has provided little persuasive evidence that the purported actions of the Tenant would constitute a significant interference with or unreasonable disturbance of another occupant or the Landlord. Consequently, I do not find that the Landlord has submitted compelling evidence to substantiate service of the Notice upon the Tenant.

Ultimately, I am not satisfied of the validity of the Notice and I find that the Notice is cancelled and of no force and effect.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenant to withhold this amount from the next month's rent.

### Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of March 20, 2020 to be cancelled and of no force or effect.

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: May 17, 2020

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Residential Tenancy Branch