



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      CNC

### **Introduction**

This hearing dealt with the tenant's application to cancel the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47 of the *Residential Tenancy Act* (the "**Act**").

The tenant attended the hearing. The landlord was represented at the hearing by its tenant relations manager ("**JS**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

### **Preliminary Issue – Service**

The tenant testified, and JS confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. I find that the landlord has been served with the required documents in accordance with the Act.

JS testified that the landlord served its evidence on the tenant on November 1, 2020 (the day before this hearing). He testified the landlord waited this long due to "workload issues". At the hearing, the tenant testified that, while he has looked at the landlord's evidence, he would need "a couple more days" to properly review it.

Rule of Procedure 3.15, in part, states:

[T]he respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The landlord failed to comply with this rule. Rule 3.17 gives an arbitrator the authority to permit late-filed evidence into the record:

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5, 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence

and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

I find that the evidence was available to the landlord at the time the Rules required the landlord to serve the tenant its evidence. It was due to poor time management on the part of the landlord that the evidence was not served. Additionally, I find that the tenant would be unreasonably prejudiced if this evidence were admitted into the record, as he has not had sufficient time to review it and consider its significance.

Accordingly, I exclude all documentary evidence provided by the landlord from the evidentiary record. JS was permitted to give oral testimony on all aspects of the dispute.

### **Issues to be Decided**

Is the tenant entitled to an order cancelling the Notice?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting November 7, 2019. The monthly rent is \$375 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$400 (calculated on an economic rent of \$800), which the landlord continues to hold in trust for the tenant. The rental unit is an apartment located on the third floor of the residential property. JS testified that the residential property is "fully staffed" and is "supportive housing".

Neither party submitted a copy of the tenancy agreement into evidence (nor did the landlord provide a copy in the documents I have excluded). However, JS testified that the tenancy agreement was not the standard RTB form tenancy agreement but was "bespoke". He testified (and the tenant agreed) it included a term to the effect that the tenant must not disturb other occupants of the residential property (including loud conversations or noise) to deprive them of their quiet enjoyment of the property at any time and *in particular* between 11:00 pm and 7:00 am.

The Notice indicates an effective move-out date of September 30, 2020. The tenant confirmed receipt of the Notice.

The grounds to end the tenancy cited in that Notice were:

- 1) the tenant or a person permitted on the property by the tenant has
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- 2) the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to
  - damage the landlord's property;
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;

At the hearing, JS testified only to unreasonably disturbances to other occupants of the residential property caused by the tenant. He provided no testimony as to any illegal acts perpetrated by the tenant or his guests, nor any regarding actions of the tenant that may have jeopardized the health, safety or lawful right of another occupant.

JS testified that the landlord has received numerous noise complaints from occupants of the residential property about the tenant. He testified that the landlord first sent the tenant a warning letter on December 26, 2019. The landlord sent a further letter on June 23, 2020. He testified that the landlord's staff met with the tenant on July 9, 2020 to discuss noise complaints and warned the tenant that any further complaints may lead to his eviction. JS testified that the landlord sent the tenant a letter on July 10, 2020 as a follow up to this meeting.

The tenant denied receiving the June 23 or July 10 letters. He agreed that he did meet with the landlord's staff on July 9, 2020, and that the issue of noise complaints was discussed.

JS testified that following the July 9, 2020 meeting, the landlord received six further noise complaints (most from the unit located below the tenant's unit, but one from the unit above) as follows:

- three complaints on July 18, 2020 relating to the dropping of an item on the floor, a loud banging noise, and "heavy walking";
- two complaints on August 7, 2020 for "similar issues"; and
- one complaint on August 12, 2020 for "similar issues".

JS testified that he was unaware of the duration of these disturbances and could not say for how long they persisted. Additionally, he testified that he was not aware of any further disturbances by the tenant since the Notice was served on him (the tenant testified that there were none).

The tenant testified that he was surprised when he received the Notice, as three days prior, the landlord conducted an inspection of the rental unit, and the issue of his eviction was not mentioned.

The tenant did not deny causing the noises as alleged above, but instead testified that they were, for the most part, the ordinary sounds of living. He testified that on one occasion he dropped a flowerpot on the floor and that on another occasion he was moving furniture so he could clean under it. He stated that sometimes he can be “clumsy” and causes noise.

He testified that the footstep noises were caused by a pair of hard-soled shoes he owns, and that on the date of complaint he had put them on in the kitchen and walked to his front door to leave. He testified that by the time he got to the landlord’s office in the residential property, the tenant below him had lodged a complaint. He testified that, since this time, he has tried not to put the shoes on in the rental unit.

The tenant also testified (and JS agreed) that most of the complaints related to noises he caused in the late afternoon or early evening, before 11:00 pm. He argued that these noises should therefore not be considered disturbances of occupants’ quiet enjoyment. JS argued that the tenancy agreement forbade any tenants at any time of the day, and only in particular after 11:00 pm.

Finally, the tenant testified that he denies ever yelling or slamming furniture, but on one occasion he had an episode caused by his disability (he did not specify what this was) and that this may have caused a disturbance. He testified that he started taking new medications, and that this should not be a problem going forward.

## **Analysis**

Rule of Procedure 6.6 states:

### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, despite this being the tenant’s application, the landlord must prove that the tenant caused the disturbances alleged, and they are so unreasonable as to warrant service the Notice.

I must note that the landlord has not provided any evidence as to the nature of the disturbances that gave rise to issuing of the December 2019 or June 2020 letters. I only

have JS's testimony as to the nature of disturbances made after the July 2020 meeting. As such, these disturbances are the only ones that I can consider when assessing the validity of the Notice.

Section 47(1)(d) of the Act allows a landlord to "end a tenancy by giving notice to end the tenancy if [...] the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property".

The Act does not set out a certain time before which a tenant can make noise and after which a tenant may not. Rather, the Act requires that the disturbance be "unreasonable". What might constitute an "unreasonable" disturbance changes depending on the time of day (for example, vacuuming at 5:00 pm is a reasonable disturbance, whereas vacuuming at 4:00 am an unreasonable disturbance).

Any noise emanating from the rental unit that can be heard by another occupant of the residential property is a "disturbance". This includes dropped flowerpots, footsteps, dragged furniture, or yelling. Based on the testimony of the parties, I find that the tenant caused such disturbances and that they were heard by at least one other occupant.

In order to determine if such disturbances warrant ending the tenancy, I must determine if they were unreasonable. In determining the reasonableness of certain disturbances, many factors can be considered, including the time, duration, frequency, and volume of the disturbances.

Based on the tenancy agreement, I find that the tenant and occupants had a legitimate expectation that, between 11:00 pm and 7:00 am, there was a lower threshold for acceptable noises than at other times during the day. This time period could be characterized as a "quiet time". It is reasonable to conclude that, during this quiet time activities which might otherwise be acceptable (such as vacuuming, watch TV or listening to music) are not permitted. As such, I find that disturbances caused by the tenant while undertaking ordinary household activities, such as cleaning, moving furniture, or walking, before 11:00 pm, are not unreasonable disturbances.

Additionally, the landlord has not provided any evidence as to the duration of the disturbances. I cannot say how longer the other occupants were disturbed by the actions of the tenant. A short disturbance (such as a dropped flowerpot) is more likely to be reasonable than a protracted disturbance (such as the television played at full volume for an hour). Most of the types of disturbances alleged by the landlord are brief by their nature (item dropping, walking, a "loud bang"). This suggests that they are not unreasonable.

The landlord did not call any of the occupants to give evidence at the hearing. As such, I cannot say how long the disturbances lasted or how loud they were. As such, and as JS could not say, I have no basis to find that the disturbances were unreasonable on the basis of their volume or duration.

I accept the tenant's testimony that he may have had an episode due to his disability where he caused a protracted and/or loud disturbance. However, based on the evidence before me, this appears to have been an isolated incident. I accept the tenant's unrefuted testimony that he is taking new medication which assists in preventing such episodes. I also note that the nature of "supportive housing" lends itself to having tenants who may have disabilities or conditions that may cause them to occasionally cause loud disturbances. As such, I find that a single such incident is not unexpected or unreasonable and should not warrant an eviction.

I find that, on the evidence before me, the landlord has failed to discharge its onus to prove that the tenant has unreasonably disturbed other occupants of the residential property. I find that, while the tenant has caused some noises which have disturbed other occupants, these disturbances were not unreasonable, the times of day the disturbances occurred, the nature of the disturbances, their volume, and their frequency.

The landlord did not provide any evidence whatsoever to support the other reasons listed on the Notice for ending the tenancy (illegal acts perpetrated by the tenant or his guests and actions of the tenant that may have jeopardized the health, safety or lawful right of another occupant). Accordingly, it has failed to discharge its onus to prove those allegations as well.

I order the Notice cancelled and of no force or effect. The tenancy shall continue.

### **Conclusion**

I grant the tenant's application. The Notice is 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: November 3, 2020

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Residential Tenancy Branch