



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

On September 14, 2020, the Tenant 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 September 3, 2020, (“the One Month Notice”).

The matter was scheduled as a teleconference hearing. The Landlord and Tenant appeared at the hearing. The Landlord was assisted by witnesses who were kept separate from the hearing until their testimony was needed.

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.

The Tenant received the Landlord’s documentary evidence late; however, the Tenant agreed that he had an opportunity to consider and respond to the evidence. The Landlord’s evidence was admitted. 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/ reason to end the tenancy?

### Background and Evidence

The tenancy began back in 2012 and is on a month to month basis. Rent in the amount of \$769.00 is due to be paid to the Landlord by the first day of each month.

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

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

*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*

*Tenant has engaged in illegal activity that has, or is likely to:*

- *Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord*
- *Jeopardize a lawful right or interest of another occupant or the Landlord*

The One Month Notice provides information for Tenants who receive the Notice. The Notice provides 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 disputed the One Month Notice on September 14, 2020 within the required time period.

The Landlord provided testimony on the reasons why the tenancy should end. The Landlord testified that the covid crisis stopped the Landlord from evicting the Tenant sooner. The Landlord testified that the Tenant has lived on the rental property for many years and they have tolerated his behaviour.

The Landlord stated that last year, the occupant who lived above the Tenant stated that she may be moving out. The Landlord stated that the Tenant indicated that he wanted to move into the unit above. The Landlord testified that shortly after this, the Tenant started complaining about noise coming from the occupant and children. The Landlord testified that the Tenant was continuously complaining. The Tenant also complained about noise from a dog.

The Landlord stated that they asked the Tenant what he wants the Landlord to do about the children and dog, and that he replied that he does not give a "f\*\*\*" about the dog or the kids.

The Landlord testified that the Tenant yells at the Landlord continuously.

The Landlord stated that another occupant caught the Tenant putting something in a cat's food.

When the Landlord was asked whether or not she had issued any warning letters to the Tenant about this reported behaviour, the Landlord stated that no warning/ caution letters were given to the Tenant.

When the Landlord was asked whether or not she spoke to the occupants living above the Tenant about the noise from the children and dog, she stated that she did.

The Landlord presented a witness, Ms. L.G. Ms. L.G. provided affirmed testimony that she lives at the residential property and that approximately 1.5 years ago the Tenant started screaming at her and was banging on her door. She then testified that about nine months ago he banged on her ceiling and then came up and screamed at her in front of her children. She testified that the Tenant now plays loud music which has disturbed her and her children at 11:00 pm at night. She stated that she never spoke to the Tenant about the noise but did mention her concern to the Landlord.

The Landlord presented a witness, Ms. C.Q. Ms. C.Q. provided affirmed testimony that approximately one year ago she observed the Tenant putting powder by a cat enclosure. She testified that the powder appeared to be cayenne. Ms. C.Q. stated that in the past six months there has been a lot of noise coming from the Tenant's television which affects her need to study for college. She testified that she reported her noise concerns to the Landlord.

The Landlord presented a witness, Ms. P.W. Ms. P.W. provided affirmed testimony that the Tenant has come over to the other building on the residential property and complained about the Landlord; calling the Landlord names.

In response to the testimony from the Landlord and witnesses, the Tenant testified that he has never received any written notices from the Landlord regarding any of these reported incidents.

The Tenant was asked whether or not the Landlord spoke to him on numerous occasions about these incidents and he replied that the Landlord may have spoken to him on one occasion. He stated that the Landlord never told him that his neighbors have complained.

The Tenant testified that he has not tried to poison any animals and that daughter of the occupant living above him smiled and waved at him recently.

The Tenant testified that he did call the SPCA regarding the barking dog.

### Analysis

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

*A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.*

Based on the evidence and testimony before me, I make the following findings:

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

I find that the Landlord is obligated to protect all the tenants right to quiet enjoyment. I find that the Tenant was bothered by noise from his neighbor and he acted out of anger or frustration when the Landlord did not resolve the issue to his satisfaction.

I find that it is more likely than not that the Tenant banged on the ceiling and knocked on his neighbor's door. I also accept that the Tenant is frustrated and has yelled at the Landlord.

If the Tenant was disturbing the other residents to the degree that is alleged, I would expect that the other residents would have made complaints to the Landlord. There is no documentary evidence of complaint letters / emails from the other residents about the Tenant that were made prior to when the notice to end tenancy was issued. There is no documentary evidence of incident reports created by the Landlord due to complaints received from other residents.

With respect to the incidents raised by the Landlords witnesses, I find that one incident occurred 1.5 years ago; and another approximately nine months ago, which would be approximately February 2020. The Landlord did not take steps to end the tenancy, back when those incidents occurred.

With respect to whether or not the Tenant was informed that his behavior was putting his tenancy at risk, it is reasonable to conclude that he should have been aware that his behavior was not appropriate. However, I find that the Tenant never received any written warnings from the Landlord at the time of the complaints and was not given an opportunity to respond to the allegations made against him at the time. Furthermore, as mentioned above the catalyst for the Tenant's behavior is what he feels is a loss of his own quiet enjoyment.

With respect to illegal activity, the Landlord did not provide a copy of a relevant statute or bylaw as proof that the Tenants behaviour was illegal. The party alleging illegal activity has the burden of proving that the activity was illegal.

After considering the totality of the evidence before me, I find that the Landlord does not have sufficient evidence to end the tenancy. However, I find that the Tenant's behavior was very inappropriate. The Tenant is cautioned that his behavior of yelling or banging on doors or ceilings of neighbors is not appropriate and any further behavior that disturbs other occupants, may result in the Landlord issuing a One Month Notice to End Tenancy for Cause that may be found to be sufficient to justify ending this tenancy.

The One Month Notice to End Tenancy for Cause, dated September 3, 2020 is cancelled.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was not blameless in this matter, I decline an order for the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

### Conclusion

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated September 3, 2020, is successful. The One Month Notice 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: November 18, 2020