



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Bloom Group  
and [tenant name suppressed to protect privacy]

## **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. The Tenant confirms receipt of the Landlord’s evidence.

### Issue(s) to be Decided

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 started in 2014 with a new tenancy agreement entered into on August 1, 2015 with the current landlord that took over. Rent of \$348.00 is payable on the first day of each month. On August 28, 2021 the Tenant received a one month notice to end tenancy for cause dated August 27, 2021 (the “Notice”). The Notice contains two reasons: the tenant or a person allowed on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and the Tenant or person allowed on the property by the Tenant has engaged in illegal activity that has adversely affected the security, safety or physical well-being of another occupant or the landlord.

The Landlord states that the Tenant has been engaged in the selling of drugs from the property. The Landlord states that the Tenant has been seen in the common areas exchanging small packages for money. The Landlord does not know what is in those packages. The Landlord states that only the traffic from these exchanges is disturbing to others. The Landlord states that the primary issue is the noise caused by the coming and going of the Tenant's guests through the stairwell adjacent to a tenant that has made numerous complaints. This tenant is an elderly person and has been woken up every night usually between 11:00 p.m. to the early hours of the morning. The Landlord acknowledges that these complaints are directed at both the Tenant and the Tenant's other neighbour who is also causing noise. The Landlord states that the Tenant's other neighbour, about whom complaints have been made of the same noise, has also complained about the Tenant's noise. The Landlord states that there have been 4 complaints in April 2021 that single out only the Tenant with an additional complaint from October 2021 since the Notice was served. The Landlord states that they cannot say that the Tenant's guests are making all the noise from the stairwell for which complaints are being received.

The Tenant states that over the long term of the tenancy there have never been any problems. The Tenant denies selling illegal drugs and states that several times the Tenant has sold cigarettes to persons in the common area or has lent money to others to use the vending machine. The Tenant states that several of the Landlord's statements from the other tenants are dated after the Notice was served. The Tenant states that there is only one guest that on occasion stays overnight. The Tenant states that due to a medical condition the Tenant sleeps mostly during the day. The Tenant states that due to COVID the Tenant has trying to be positive in using the stairwell door for her guests. The Tenant states that after 10:00 p.m. guests cannot access the building by a buzzer and a tenant has to go to the lobby to allow the entry. The guests can use either the elevator or use the stairwell.

The Landlord states that the 10:00 p.m. restriction on buzzing guests into the building is not the problem as the Landlord has only received complaints from the Tenant's 18<sup>th</sup> floor. The Landlord states that they cannot say that the Tenant's guests are making the noise and that it is the elderly tenant who reports that the people who enter through the stairwell are going into the Tenant's unit. The Landlord confirms that this tenant only identifies two instances of noise specifically from the Tenant's guests and that the other noise could very well be coming from the other neighbouring tenant who made complaints as well. The Landlord states that both the Tenant and this other neighbouring tenant have been served with notices to end their tenancies.

The Tenant states that they are trying very hard to be quiet but that sound from all the units can easily be heard from the hallways. The Tenant states that there is little to no sound barrier into the hallways. The Tenant states that from the hallway persons inside their units can be heard talking on their phones.

The Tenant's advocate argues that the tenant that is not the elderly tenant has made complaints in order to deflect the complaints made about their own unit and guests and to avoid their own eviction. The advocate argues that in essence there is only one tenant who is complaining, and this elderly tenant's evidence is vague about whose unit the guests are entering. The advocate argues that the Landlord has insufficient evidence to substantiate that the noise is caused by the Tenant or the Tenant's guests.

### Analysis

Section 47(1) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia, 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;

- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

Given the Landlord's evidence that the sale of illegal drugs in itself is not disturbing anybody, I find that even if the Tenant were selling illegal drugs the Landlord has not substantiated that an illegal activity is adversely affecting or disturbing anyone. Given the Landlord's evidence I find that the real issue is only the traffic through the stairwell doors late at night that is disturbing the elderly tenant. The Landlord's evidence is that the Tenant's guests have only been identified a couple of times by this tenant as making noise in April 2021, approximately four months prior to the Notice being served. This evidence does not support significant interference or unreasonable disturbance. I also consider, given the undisputed evidence that the other complaining tenant is facing eviction from the apparently same source of noise, that the evidence from this tenant is of little persuasion. For these reasons I find on a balance of probabilities that the Landlord has not sufficiently substantiated that the Notice is valid for its stated reasons. 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: January 19, 2022

---

Residential Tenancy Branch