



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Greenaway Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause.

Both tenants attended the hearing with an Advocate or Support Worker. An agent for the landlord also attended. The parties each gave affirmed testimony and the landlord called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to give submissions.

During the course of the hearing the tenants indicated that they have not received the landlord's evidence. The landlord's agent advised that all evidence of the landlord was provided to the first Advocate that was assisting the tenants. On January 17, 2022 the landlord's agent learned that the Advocate would no longer be representing the tenants, and a copy of that withdrawal has been provided for this hearing, dated January 12, 2022. The landlord has also provided a Canada Post cash register receipt for the evidence served dated December 21, 2021 as well as a Registered Domestic Customer Receipt addressed to the tenants' first Advocate. I am satisfied that the landlord has provided the evidence to the tenants in accordance with the *Act* and the Rules of Procedure.

All evidence of the parties has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was given in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?

### Background and Evidence

**The landlord's agent** testified that this month-to-month tenancy began on January 1, 2012 and the tenants still reside in the rental unit. Rent in the amount of \$750.00 was originally payable on the 1<sup>st</sup> day of each month, which has been increased over time and is now \$835.00 per month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$375.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 10 units, and the landlord's agent does not reside on the property. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that on September 13, 2021 the tenants were served with a One Month Notice to End Tenancy for Cause by attaching it to the front door of the rental unit with a witness present. A copy of the Notice has been provided for this hearing and it is dated September 10, 2021 and contains an effective date of vacancy of October 31, 2021. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Starting about February, 2021 the landlord has received multiple complaints from multiple residents against the tenants and guests. Most of the complaints were about the tenant wife screaming throughout the day and night at her husband or guests, causing alarm for other occupants not knowing if she's in distress. Also, frequent visitors have caused their dog to bark. Complaint letters from other occupants have also been provided for this hearing.

When issues continued to happen caution notices were issued to the tenants, and copies have been provided for this hearing. The first is dated March 30, 2021 and states that the date of occurrence is ongoing in February and March, 2021. It also states that, "multiple resident complaints received regarding their loss of quiet enjoyment due to the actions of yourself and/or your guests. Four written complaints received on from separate neighbours citing fighting and yelling occurring in the unit throughout the day and night, frequent visits from visitors coming at all hours for short visits which is setting off dogs to bark. Residents are unable to sleep when these disturbances occur as well has caused

residents stress and loss of quiet enjoyment.” It sets out Grounds for Ending a Tenancy, *Residential Tenancy Act*, Sec. 47(1) (d): 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; (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; and (h) the tenant (i) has failed to comply with a material term, and (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

However, the landlord still got complaints.

The second caution notice is dated May 20, 2021 and states that the date of occurrence was May 19, 2021, and the incident: “We have received a complaint from neighboring residences against your unit. The residents cited that numerous frequent visitors were observed coming and going to and from your unit all day and night through to 4:30 a.m. the following day. These visits cited your dog to bark which kept residents up throughout the night. Residents are unable to sleep when these disturbances occur as well has caused residents stress and loss of quiet enjoyment. You have been written up numerous times with regard to these disturbances. Please note that if we receive a further complaint we will be issuing a 30 day notice to end the tenancy for cause.” It also sets out the same Grounds for Ending the Tenancy.

The caretaker talked to the tenants, and each time a caution notice was given, the landlord’s notices said that further complaints would result in eviction. Complaints continued and the landlord issued the One Month Notice to End Tenancy for Cause. The issues and complaints continued since the notice to end the tenancy was issued. Those complaints referred to the tenants’ dogs, as well as altercations involving police. Nothing has been improved.

The landlord would be agreeable to give more time to end the tenancy at the end of February or end of March, 2022.

**The landlord’s witness** is an on-site caretaker for the landlord and also resides in the rental property.

The witness also testified that the tenant has been yelling and screaming all the time. As an example, on the 19<sup>th</sup> of this month the witness had to ask the tenant to be quiet, who was at her balcony door yelling and screaming. The tenant’s spouse had taken off up the street and the tenant was yelling at him to come back. It was 10:00 a.m. and the

witness told the tenant to be quiet. The tenant told the landlord's witness to mind her own business.

On December 7, 2021 at 10:00 p.m. or later, the witness asked the tenant to be quiet after the tenant had been yelling at visitors that the tenants had over visiting. The witness does not know what the yelling was about, however on December 16, 2021 the witness had to call police.

The landlord has provided evidence of notes that the witness testified were kept by the witness, including during the month of September, 2021. Some are typewritten and some are handwritten. The one in September, 2021 states: "Month of September 2021 – Every morning day night rattling of pop bottles yelling screaming banging the walls we are tired of this." Also provided are letters from other occupants, 3 of which all state the same thing and are dated February 25, 2021 and March 29, 2021. The witness created the form letter for their signatures. Three additional handwritten complaint letters from other tenants have also been provided for this hearing. One is dated December 7, 2021, another is dated December 16, 2021 and the other is not dated.

The witness testified that sometimes when the tenant is not present, the witness has spoken to the tenant's spouse and advised that the noise has to stop. Sometimes the spouse is sleeping, and he also said that he understands, but it keeps happening. The tenant stops for awhile then it starts all over again. It has nothing to do with the tenant's spouse being hard of hearing, but fights, and with other people. The tenant is easy to talk to, but the tenants have been told that the screaming and shouting has to stop. Other neighbours go to the witness with concerns.

**The first tenant** (JM) testified that the tenants have been living on the rental property longer than anyone else in the building with no major problems. Then when this rental company took over, things did not get fixed as required.

The tenant has an extremely good reputation in the neighbourhood, and it's wrong to make the tenant look bad. It's a bunch of lies and letters are hog-wash or someone has an axe to grind. The tenant's wife gets loud, but this is not right.

The tenant testified that the tenants don't have visitors as claimed by the landlord. The landlord's witness also has a dog of the same breed who barks as well.

The tenant's wife is bed-ridden and only 2 people visit; one is a home car worker who visits when she has the time.

The tenant disputes that grand noises are disturbing other tenants. The fellow who lived above the rental unit before had nothing to say, and the one that lives there now said he doesn't even know if the tenants are home. The tenant asked several times if he has heard noise. He's in the army and has shift work, and has not had any problems getting up and said that the tenants have not made any noise.

With respect to the first caution notice provided for this hearing by the landlord, the tenant does not recall receiving that.

**The second tenant** (KM) testified that she is quite loud communicating with her husband, who is hard of hearing, but sometimes it's because the tenant is angry. They are not big arguments, but the tenant cannot walk and has a phobia of spiders and gets upset because she needs stuff done for her. The walls are thin.

The tenant has anxiety and panic attacks.

No one has contacted the tenant about noise, but only the caretaker.

The tenant's support worker has talked to the resident caretaker several times, but the tenant's support worker has other commitments as well. Community is important to the tenant's health.

The tenant has a loud, boisterous voice and purchased baby monitors to assist with communication, but they don't always work. The dog barks to let the tenants know if someone is at the door or if he wants out. Nothing other than that.

The tenant also testified the caution notices are put on the door, but neither of the tenants have seen them.

#### SUBMISSIONS OF THE LANDLORD'S AGENT:

The landlord would not have issued the notice to end the tenancy if the landlord's agents believed things would change, but the landlord's agent has been told that others have been affected, and issues continue today. The landlord has to look out for other tenants as well.

#### SUBMISSIONS OF THE TENANTS:

If given another chance, more effort will be made and the tenants are willing to work with the landlord; others should not be disturbed. The landlord said they would help the tenants, but haven't.

## Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause, and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

Incidents that take place after a Notice is issued are not relevant to the reasons it was issued. The landlord must establish that the landlord had cause to issue it when it was issued.

I have also reviewed the caution notices provided by the landlord. Both notices cite significant interference and unreasonable disturbances, as well as breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. It appears that neither tenant has even read them.

A material term is a term in a tenancy agreement that is so important to a party that the party would not have entered into the agreement if that term was not included.

In this case, the landlord gave a caution notice dated March 30, 2021. The second caution notice is dated May 20, 2021 and contains a description of an event on May 19, 2021. The notes made by the resident caretaker includes one in September, 2021 that states: "Month of September 2021 – Every morning day night rattling of pop bottles yelling screaming banging the walls we are tired of this." The One Month Notice to End Tenancy for Cause is dated September 10, 2021.

Considering the evidence and the testimony of the parties, I am satisfied that the landlord has established that the Notice was given in accordance with the *Act*, and that the tenants have unreasonably disturbed other occupants and have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenants' application to cancel the Notice is hereby dismissed.

The *Act* also specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the Notice given is in the approved form. Having found that it is in the approved form, and having dismissed the tenants' application to cancel it, I grant an Order of Possession in favour of the landlord. The landlord's agent testified that the

landlord would be content with an effective vacancy of the end of February or March, 2022. I also consider that one of the tenants is in a wheel chair, indicating a disability. I therefore grant the Order of Possession effective at 1:00 p.m. on March 31, 2022.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on March 31, 2022.

This order is final and binding and may be enforced.

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: January 25, 2022

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Residential Tenancy Branch