



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC, FFT**

### Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord attended the hearing, and the tenant JS attended the hearing with an agent, CS. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package and stated she had no concerns with timely service of documents.

The landlord testified that she sent her evidence package to the tenant JS by registered mail to the tenants' residential address on December 31, 2021. The tracking number for the mailing is provided on the cover page of this decision. Although the tenant denies receipt of the landlord's evidence, I find that it was properly served in accordance with section 88 of the *Act*, and I deem it served five days after it was mailed pursuant to section 90 of the *Act*. Accordingly, the landlord's evidence would be considered in this decision.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules"). The parties were informed that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*.

Issue(s) to be Decided

Should the landlord's 1 Month Notice to End Tenancy for Cause be cancelled?

Can the tenants recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The rental unit is the upper unit of a house with both an upper and lower unit. Both units are registered as legal suites with the municipality. The tenancy began with a different landlord on August 1, 2018 and she became the tenants' landlord in April of 2021 when she purchased the house. No copy of the tenancy agreement was provided as evidence, however both parties agree that the tenants who filed this application are two of the four family members on the tenancy agreement; the other two tenants are the applicant/tenants' parents. The landlord testified that the applicant/tenant's mother BS always paid the rent on behalf of the family and provided her phone number as the primary contact for the tenants.

The lower unit of the house was occupied by unrelated tenants on a separate tenancy agreement.

The landlord testified that the lower unit tenants started complaining to the landlord about the noise issues emanating from the upper unit. Screenshots of text messages from the lower unit tenants were provided as evidence by the landlord. On July 18, the lower unit tenants complained of a party held by the upper unit tenants and that the upper unit tenants were screaming, slamming doors, pacing and sliding furniture around. These noises caused the lower unit tenants to lose sleep.

Upon receiving the complaints, the landlord spoke to the tenant JS on the phone and in person. The landlord also sent multiple text messages to the tenant BS (the

applicant/tenant's mother) regarding the noise issues and the tenant JS's behaviour. The landlord testified that despite her requests to the upstairs tenants to be considerate of the lower unit tenants and respect their right to quiet enjoyment of their rental unit, the upstairs tenants continued to make noise.

On August 1, 2021, the landlord served the tenants with a breach letter on August 1, 2021 by placing it in their mailbox. A copy of the letter was provided as evidence. The letter requests that the upstairs tenants ensure that noise issues be resolved and warns the tenants that failure to respect the peace of the other tenants constitutes a breach of the terms of the lease.

On August 14, 2021, the lower unit tenants sent a notice to end tenancy to end their tenancy with the landlord due to "*continuous noise issues from the upstairs tenants*". The effective date for the lower unit tenants was September 30, 2021. In the letter, the lower unit tenants advise, "*we have spent countless sleepless nights due to yelling, stomping around, moving furniture across the floor, slamming doors etc. until 3:00/4:00 a.m. some nights. Then to make it worse someone else wakes up for work upstairs around 5:00 a.m. and starts making noise all over again. We are mentally and physically exhausted, this has caused a large strain on our health.*"

On August 29, 2021, the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause by leaving a copy of the notice in the tenants' mailbox. The landlord provided a witnessed signed proof of service document and a copy of the notice to end tenancy as evidence. The reasons cited for ending the tenancy were:

*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.*

The landlord testified that since the lower unit tenants moved out, another set of tenants moved in. The landlord advised the new set of lower unit tenants that there have been issues with the upper unit tenants that would be considered at a hearing before the Residential Tenancy Branch and asked for their patience. The landlord testified that the new set of tenants are accommodating to the landlord because they are already aware of the issues. The landlord did not indicate the new set of tenants have complained about the upper unit tenants regarding noise issues.

The tenant's agent provided the following argument. There is no tenancy agreement between the parties, only a previous tenancy agreement with the former owner of the property. The agent argues that the breach letter dated August 1<sup>st</sup> is not a proper caution notice because the landlord refers to the tenants breaching a term of the lease when there is no lease between the landlord and the tenants.

The landlord has done nothing to ensure there is noise reduction between the two units. She questions whether there is insulation between the floors and questions whether the suites are legally operated. Lastly, the agent questions why the police were never called for noise disturbances by the landlord or the lower unit tenants.

The tenant JS testified that the bedrooms to the upper unit of the house are located upstairs and that their living room is directly above the lower unit. To prevent unwanted noise downstairs, the tenants purchased an area rug for the living room. His 63 year-old father/co-tenant had knee surgery and the sound of his crutches likely disturbed the tenants below. His father comes home from work at 2 or 3 in the morning and it's usually just his mother and father at home most of the time. The tenant also works until late at night. Lastly, the tenant testified that his family does not throw parties or have large groups of people in the home.

The tenant testified that he has reached out to the new occupants of the lower unit and they are happy with the tenant and his family. There have been no noise complaints from the new occupants below and they get along fine. The new lower unit tenants recently sent the tenant a text thanking him for clearing snow during the last snowfall, according to the tenant's agent. No documentary evidence from the new lower unit tenants was provided from either the tenant or the landlord and neither of them called them as witnesses for this hearing.

### Analysis

Based on the evidence before me, I find that the tenants were deemed served with the landlord's 1 Month Notice to End Tenancy for Cause on September 1, 2021, three days after it was put in their mailbox, in accordance with sections 88 and 90 of the *Act*. I find the tenants filed an application to dispute the notice within the required ten days, on September 2, 2021, pursuant to section 47(4).

If the tenant files the application, the landlord bears the burden to prove he or she has valid grounds to terminate the tenancy for cause pursuant to rule 6.6 of the Residential Tenancy Branch Rules of Procedure. The landlord must show, on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended

for the reasons identified in the Notice. In the matter at hand, the landlord must demonstrate that the tenants

- *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.*

For the first reason, the landlord must establish that the disturbances to the lower unit tenants was “significant” or “unreasonable”. To establish this, the landlord must be able to satisfy me the interference or disturbances in question were either recurring in nature or otherwise very egregious. I do not find this to be the case. While the landlord has provided the previous lower unit tenant’s letter dated August 14<sup>th</sup>, describing “*continuous noise issues*”, I have not been provided with a comprehensive record of the ongoing continuous disturbances as alleged by them. Nor were the former lower unit tenants called as witnesses to provide testimony regarding what they experienced or the extent of their complaints. No audio recordings were provided for me to determine the extent of the “significant” noise. In a house with upper and lower living units, a reasonable observer would expect there to be noise transfer between the two units from daily living. I find insufficient evidence from the landlord to satisfy me the disturbance caused by the tenants to the lower unit tenants was significant or unreasonable.

The landlord’s second reason for ending the tenancy requires a serious threat to the health, safety or lawful right of other occupants or the landlord. I find that insufficient evidence of this was provided. The lower unit tenants imply that the noise issues lead to mental and physical exhaustion, causing a “*large strain on our health*”, however no documentary evidence of this was provided. No medical reports were presented, nor were the previous tenants called as witnesses to provide testimony regarding diminished health or safety from the tenants living above them. There were no allegations of physical violence between the two units significant enough to qualify as a serious jeopardization of the health, safety or lawful right of other occupants. While the noise from the upper unit tenants may have been annoying and bothersome to the lower unit tenants, I do not find the sounds of daily life are so awful as to seriously jeopardize the lower tenants’ health, safety or lawful rights.

Lastly, the landlord has not provided any evidence of noise complaints from the new set of lower unit tenants since the last set moved out. Although the landlord has testified that she has assured the new lower unit tenants that noise issues will be determined at this hearing, she did not specifically testify that she received any complaints from them regarding noise issues. Conversely, the tenant testified that the two families get along well and that no complaints were made to them regarding excessive noise. As the onus

falls to the landlord to prove the reasons for ending the tenancy, I find the landlord has not satisfied me that the excessive noise issues continue to exist. It would be unreasonable to end this tenancy when the occupants of both the upper and lower units get along amicably.

I find the landlord has provided insufficient evidence to satisfy me the tenancy should end for the reasons stated in the 1 Month Notice to End Tenancy for Cause. The notice to end tenancy is cancelled and of no further force or effect.

As the tenant's application was successful, the tenant is entitled to recovery of the \$100.00 filing fee for the cost of this application. In accordance with the offsetting provisions of section 72 of the *Act*, the tenants may deduct \$100.00 from a single payment of rent due to the landlord.

#### Conclusion

The landlord's One Month Notice to End Tenancy for Cause is cancelled and of no further force or effect. 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: January 18, 2022

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Residential Tenancy Branch