



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, OLC

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the *Residential Tenancy Act* (the *Act*), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice); and
- An order for the Landlord to comply with the *Act*, regulation, or tenancy agreement.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant's legal advocate (the Advocate), and two witnesses/support people for the Tenant, H.D. and M.S. The hearing was also attended by two agents for the Landlord (the Agents) A.M. and M.P., as well as two witnesses for the Landlord, S.C. and E.M. All testimony provided was affirmed. The parties, their agents, and their witnesses were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. The Tenant stated that the Notice of Dispute Resolution Proceeding (NODRP) package, which contains a copy of the Application and the Notice of Hearing, were personally served on the Agent A.M. on January 20, 2022, the same day they received them from the Residential Tenancy Branch (the Branch), in the presence of the witness H.D. The Agent A.M. acknowledged service in the above manner at the hearing. Branch records show that the NODRP was made available to the Tenant by the Branch on January 19, 2022, to be served on or sent to the Landlord by January 22, 2022. As A.M. acknowledged personal receipt on January 20, 2022, I find that the NODRP was served in accordance with sections 59(3) and 89(1)(a) of the *Act* and rule 3.1 of the Rules of Procedure. The hearing therefore proceeded as scheduled.

The parties, their agents and their witnesses were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. They were asked to refrain from speaking over myself and one another and to hold their questions and responses until it was their opportunity to speak. They were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Tenant, copies of the decision and any orders issued in their favor will be mailed to the mailing addresses listed in the Application.

#### Preliminary Matters

##### Preliminary Matter #1

The witnesses were excluded from the proceeding until called upon to provide testimony. Where applicable, the witnesses were then allowed to remain at the hearing, if they were also acting as a support person for one of the parties. Witnesses who were also acting as a support person were permitted to provide their testimony first, so as to maximize their time in the hearing as a support person.

##### Preliminary Matter #2

The parties disagreed about what documentary evidence was served and when. Although A.M. initially denied receipt of several documents, when I went over the documents before me from the Tenant, A.M. acknowledged receipt of all but three documents, a letter from the Tenant's witness M.S., a letter from a person with the initials C.S., and a doctor's note. As the Tenant had no corroboratory documentary evidence or witness testimony to confirm service of the above noted three documents, and the Agent A.M. denied receipt, I found that the Tenant had not satisfied me that they had been served in accordance with the *Act* and the Rules of Procedure and I

therefore excluded them from consideration, with the exception of the letter from the Tenant's witness M.S., as they read the letter verbatim during the hearing.

The Agent stated that the Landlord's documentary evidence was personally served on the Tenant, but the Tenant denied receipt of several documents before me from the Landlord, including a two page hand-written document from the Agent A.M., and a two page letter dated February 10, 2022, from a person with the initials C.N. As the Agent A.M. had no corroboratory documentary evidence or witness testimony to confirm service of the above noted two documents, and the Tenant denied receipt, I found that the Agent had not satisfied me that they had been served in accordance with the *Act* and the Rules of Procedure and I therefore excluded them from consideration, with the exception of the two page letter from the Agent A.M., as they read the letter verbatim during the hearing.

### Preliminary Matter #3

In their Application the Tenant sought multiple remedies under multiple unrelated sections of the *Act*. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a One Month Notice, I find that the priority claim relates to whether the tenancy will continue or end. As the Tenant's claim for an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement relates to enforcement of a no-smoking rule, entry to the rental unit, and the Tenant's right to privacy, I find that they are not sufficiently related to the One Month Notice. As a result, I exercise my discretion to dismiss those claims with leave to reapply. As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of the One Month Notice.

### Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If not, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

### Background and Evidence

The Agent A.M. stated that the Tenant had unreasonably disturbed a neighbouring tenant by running a loud fan continuously for an extended period of time, and that a One Month Notice was served as a result. The parties agreed that the Tenant was personally served with the One Month Notice on December 29, 2021. The One Month Notice in the documentary evidence before me is on the Branch form, is signed and dated December 28, 2021, has an effective date of January 31, 2022, and states that the tenancy is being ended because the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. In the details of cause section further details were provided regarding a noise disturbance described as a “rapid vibration hitting the wall”.

The witness S.C. stated that their unit shares a wall with the Tenant’s unit, and that between December 21, 2021 – December 27, 2021, they were disturbed constantly and continuously by “incessant rattling” coming from the Tenant’s rental unit. S.C. stated that the noise stopped between December 28, 2021 – December 29, 2021, but started up again on December 30, 2021, continuing until January 3, 2022. S.C. stated that the noise then continued periodically between January 4, 2022 – January 15, 2022, before ceasing completely. S.C. stated that the noise was so significant that it prevented sleep, was driving them crazy, and that anyone who came over was shocked by the noise. During the hearing S.C. played a recording over the phone that was allegedly taken in the rental unit on a tape recorder. The recording was loud and a very distinctive and disruptive noise could be heard. Although S.C. acknowledged that the noise in the recording was slightly louder than the noise as heard in the rental unit, it was largely accurate.

The Witness E.M. stated that they are friends with S.C. and also reside in the same complex as S.C. and the Tenant. E.M. stated that they went to S.C.’s apartment and heard the noise described by S.C. and heard in the recording. E.M. stated that the Tenant is not a good fit for the complex and described past events and interactions with the Tenant unrelated to the grounds noted in the One Month Notice.

The Agent M.P. stated that they attended S.C.’s rental unit and heard the noise described by S.C. and took their own recording. M.P. played their recording twice during the hearing. On the first play through I could only hear voices. On the second play through I turned the volume on my headset all the way up and requested that M.P. play

the recording at maximum volume, at which point I could hear the same noise as S.C.'s recording, although the noise was very significantly quieter, and barely audible.

Although the Tenant's witness M.S. provided testimony during the hearing, it related to issues other than those listed as the grounds for ending the tenancy in the One Month Notice. As a result, I have not summarized it here or considered it further.

The Agent A.M. read their two page written statement verbatim wherein they stated that on December 27, 2021, they received a complaint letter from S.C. regarding a noise originating from the Tenant's rental unit. A.M. stated that they visited S.C.'s rental unit on December 28, 2021, and heard the noise in question. A.M. stated that they then went next door to the Tenant's rental unit and after having some difficulty getting the Tenant's attention, advised them that they believed that a fan in the rental unit was causing a disturbance to the neighbouring rental unit. A.M. stated that the Tenant responded by advising them to have S.C. stop smoking indoors. A.M. stated that as they had had enough, they returned home, completed the One Month Notice, and served it on the Tenant the following day. When asked, A.M. acknowledged that they did not check to see if the noise disturbance had ceased before serving the One Month Notice, but received a thank-you note from S.C. on December 29, 2021, which they took to mean that the noise disturbance had ceased. A.M. stated that they did not receive another complaint from S.C. until January 4, 2022, at which point S.C. advised them in writing that the noise had begun again on December 30, 2021, and continued until January 3, 2021. A further note was received on January 23, 2022, from S.C. stating that as of January 15, 2022, the noise has stopped. Copies of the complaints/notes from S.C. were submitted for my review and consideration.

The Advocate called into question the authenticity of the recordings, as neither they nor the Tenant were provided with copies, and therefore their authenticity could not be determined. The Advocate and Tenant also stated that they were unable to hear anything at all in the recording from M.P. other than voices. The Tenant argued that E.M.'s testimony is not credible or impartial, as they have had past negative interactions. The Tenant stated that they started using the fan after the Agent A.M. advised them to in relation to their complaints regarding smoke from S.C.'s rental unit. The Tenant stated that they have been running the fan in their rental unit since September of 2021, in similar locations throughout the small rental unit, and that they find it odd that it only caused a disturbance in December and January. The Tenant stated that the fan is still in regular use and was in fact on at the time of the hearing. I had the Tenant go and stand beside the fan during the hearing and although I could hear a

soft fan noise, nothing loud or disruptive could be heard by me. The Tenant denied that it was ever close enough to a wall to transfer sound or vibrations and described it at a standard box-type fan.

The Advocate argued that the Agent A.M. should have given the Tenant a warning letter as the Tenant had started using the fan at the Agent's recommendation and because the Agent refused to deal with the issue of S.C. smoking in their rental unit, which disturbs the Tenant. The Advocate also stated that if the Agent had made any attempts to enter the rental unit, they would have been able to see that the fan was not near a wall and not causing a disturbance. A.M. stated that they do not recall ever telling the Tenant to get a fan to dissipate smoke,

### Analysis

Section 47 of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if 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. A neighbouring occupant attended the hearing and testified that they were disturbed continuously by noise and vibration coming from the Tenant's rental unit between December 21, 2021, and December 27, 2021. However, the occupant did not report the disturbance to the Landlord until December 27, 2021, and according to the Agent A.M.'s testimony, the Agent only went to the Tenant's rental unit once on December 28, 2021, to advise them that they believed that a fan was causing a disturbance, before subsequently serving the One Month Notice the following day.

I find that a fan is not something that a reasonable person would ordinarily suspect would cause a significant interference or an unreasonable disturbance, when operated normally. As a result, I think it was reasonable for the Tenant to assume that its use was reasonable and permissible until they were advised by A.M. on December 28, 2021, that it was disturbing their neighbour. As the Agent A.M. acknowledged that they made no efforts to determine whether or not the noise disturbance from the Tenant's fan had ceased before serving the One Month Notice on the Tenant, I find that it was unreasonable for them to do so. As a result, I grant the Tenant's Application seeking cancellation of the One Month Notice.

However, the Tenant is forewarned that if their fan causes a significant interference or an unreasonable disturbance to another occupant or the Landlord, the Landlord may be within their rights to issue another One Month Notice.

### Conclusion

The One Month Notice is cancelled. I order that the tenancy therefore continue in full force and affect unless or until it is ended by one or both of the parties 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: March 11, 2022

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Residential Tenancy Branch