



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Medallion Industries Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on December 21, 2021 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the “One Month Notice”) and a reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 1, 2022. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

Both parties attended the hearing. At the outset, each confirmed they received the prepared documentary evidence prepared by the other. On this basis, the hearing proceeded.

### Issues to be Decided

Is the Tenant entitled to an order to cancel the One Month Notice pursuant to s. 47 of the *Act*?

If the Tenant is unsuccessful in their Application, is the Landlord entitled to an Order of Possession pursuant to s. 55 of the *Act*?

Is the Tenant entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

### Background and Evidence

The Tenant provided a copy of the tenancy agreement in their evidence. The details and signatures were blank. The parties confirmed there was an agreement in place and verified the basic terms in the hearing. The tenancy started on July 1, 2020 for \$925 per month. This rent amount increased to \$978 in January 2022. The Tenant paid a security deposit of \$462.50. The Landlord verified the Tenant was never asked to pay a pet damage deposit.

The second page of the blank document submitted in the evidence has standard terms on "Conduct" and "Pets." This notes ". . . the tenant . . . must not disturb, harass, or annoy another occupant of the residential property, the landlord or a neighbour." The restrictions on noise that disturbs others "disturb the quiet enjoyment of another occupant of the residential property or other persona at any time, and in particular between the hours of 10:00 p.m. and 9:00 a.m." The clause regarding pets allows for a tenant to keep a pet when "permitted in writing in advance by the landlord."

The Tenant and the Landlord each provided a copy of the One-Month Notice issued by the Landlord on December 18, 2021. This shows the Landlord served the document to the Tenant on December 18, 2021 and the Tenant acknowledged this service in the hearing. The end-of-tenancy date indicated in the One-Month Notice is January 31, 2022.

On page 2 of the document, the Landlord provided the reason for giving the notice:

- ☐ Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

On page 2 the Landlord wrote more detail:

Noise complaints notice was given on August 25, 2021 and was not rectify. More than reasonable time was given to tenant to correct then noise complaints.

With the One-Month Notice the Landlord included a letter accompanying the One-Month Notice dated December 18, 2021. This listed the two additional "phone complaints" from December 16 and December 18, from the resident in the unit underneath that of the Tenant here. This notified the Tenant that "your cat continually has cause unreasonable noises that affected the peace and quiet enjoyment of other tenants and you failed to rectify the problem."

The Landlord included their letter of August 25, 2021 to the Tenant notifying them of complaints received on August 19 and August 22, 2021 regarding noises from the

Tenant's rental unit. This was the resident in the unit below that of the Tenant here. The Landlord provided two emails from the below resident who attended the hearing to speak to the issue.

The Landlord provided other emails from the same resident below giving similar details on noise complaints. These were sent after the One-Month Notice issued on December 18, 2021. Elsewhere in the Landlord's evidence were emails, from the same resident below, post-dating the issuance of the One-Month Notice.

In the hearing, the Landlord presented that the Tenant had asked for approval to adopt a cat, and they approved this, thinking it was only a cat in the Tenant's rental unit, and would not make too much noise. The resident below the Tenant's rental unit began their complaints that the Tenant's cat was disturbing them during sleeping time, so on August 25, 2021 the Landlord sent the letter to the Tenant to inform them of this.

The Tenant provided they got the cat on December 30, 2022 after they received approval from the Landlord on November 28. This was a kitten at the time. Then in late June or early July, they started receiving complaints. The Tenant in the hearing clarified that the pet in question is a single cat.

The resident below the Tenant attended the hearing and described the issue from their perspective. Other noises including "crashing and banging" came after the original source of the noise, which was the cat. As stated: "You can hear them racing around on floors like racing horses" "[it] sounds like heavy furniture being knocked over and dragged." They advised the building manager in "about June 2021", and they went to the Tenant's rental unit many times on their own to knock on the door and ask the Tenant to keep it down.

In response to the Landlord's evidence, and describing the situation and developments in the hearing, the Tenant made the following points:

- they made adjustments to their living arrangement when the complaints started: this includes rugs and pads on top of existing rugs they had; they started locking the cat in the bathroom from 10pm onwards in July, and 9pm onwards in August; they did not allow the cat in the bedroom at any time; they rearranged their own schedule to accommodate "gatherings" on 45 separate occasions; they ensured there was no cleaning or walking at all in the bedroom area after 9pm.
- they notified the Landlord of these changes they made in their rental unit and lifestyle from June 2021 through to the present (the Landlord confirmed they did

know about the adjustments, and the Tenant provided evidence of this in September and October 2021 emails)

- they asked for consideration of the age of the building in question, providing a BC Assessment record showing the building was constructed in 1960, advising the Landlord of this on October 25, with the wood frame building and hardwood floors leading to the transmission downwards of sound, not in their control
- in February 2022 they conducted a “sound check” with the Landlord present, noting this did not take place prior to the Landlord issuing the One-Month Notice
- they advised the Landlord of a short-term trip they took for 2-3 days, in order to alleviate complaints and let the resident below know there was a possibility of sound occurring when they were not present in the rental unit.
- they provided prior decisions of the Residential Tenancy Branch, showing the age of the building structure can be taken into consideration, and other similar situations that did not justify ending a tenancy
- they “care deeply about ensuring the peace and quite of others”, and they have done everything the could to hear what is being presented to them as complaints

In the hearing the Landlord questioned the Tenant directly on the issue. This clarified the cat’s own weight, the fact that the cat does not wear jewelry, and there is no furniture moving. The Landlord even queried what type of shoes the Tenant wears in the rental unit. At the Landlord’s prompting, the resident below added that things were “noticeably quieter” in the last month; however, normally things are “intolerable”.

### Analysis

The *Act* s. 47(1)(h) provides that a landlord may end a tenancy if the tenant has failed to comply with a material term of the agreement, and not corrected the situation within a reasonable amount of time.

In this matter, the onus is on the Landlord to provide they have cause to end the tenancy. The Landlord spoke to the reasons in oral testimony; however, I find evidence presented by the Landlord is insufficient cause for ending the tenancy.

Regarding s. 47(1)(h), a “material term” is one that the parties both agree is so important that the most trivial breach of the that term gives the other party the right to end the agreement. The Residential Tenancy Branch developed a Policy Guideline 8, on *Unconscionable and Material Terms* that gives a statement of the policy intent of the

legislation. This provides that the party alleging a breach must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline must be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

The Landlord relied on their letter dated August 25, 2021 as proof of their notification to the Tenant. This does not identify a breach of a specific term of the lease agreement – rather, it refers to “terms” (i.e., plural) that are not set out in that individual letter. Further, the Landlord did not set a deadline for the Tenant to fix the problem, with a reasonable deadline. This nullifies the Landlord’s reliance on the breach of a material term as fatal to the tenancy.

The Landlord did not indicate other grounds on the Two-Month Notice. What they present focuses on complaints from a single other tenant. I find this is not “tenants” (i.e., plural) as they stated to the Tenant in the letter accompanying the One-Month Notice, dated December 18, 2021. There is no indication on the One-Month Notice of unreasonable disturbance or significant interference to others, and the Landlord refers throughout to only the complaints of the other resident who lives below the Tenant.

I find the Landlord issued this One-Month Notice on the narrative of one single other resident that was not verified objectively or independently before they did so. The Landlord’s attempt at verifying an abnormal source of noise in the Tenant’s unit – that which would stand as an independent assessment – only took place after the Landlord issued the notice to end the tenancy. I find this is unfair to the Tenant.

Other than this, I find the chief resident complaints were made under the assumption that there were cats (i.e., plural), which was incorrect. There is not an objective assessment and I find this other resident’s claims are exaggerated. There is no furniture movement and in other terms that resident described sounds like “building a truck” within the rental unit which is nothing but an exaggeration based on a loose simile. In order to rectify this the Landlord has chosen to end the tenancy based on assumptions and an unreasonable number of complaints about noise.

By contrast, I find the Tenant presented their clear efforts at minimizing noise. I find they have been at pains to do so, yet still the complaints from the other resident continue. The questions to the Tenant in the hearing involved the weight of their pet, and even what kind of shoes they wear within the rental unit, with some speculation that they were high heels. I find this is borderline insensitive, and it is possible to see that the nature and degree of the complaints are interfering with the Tenant's own quiet enjoyment of their rental unit.

Based on what the landlord submitted here, I am not satisfied of the severity of the problem being ongoing in nature.

I weigh this against the Tenant's own statements that acknowledge the seriousness of the problem, and their list of steps they have taken to alleviate or halt the problem. This is a restrictive schedule on their own use of certain areas of their own suite, as well as confining their cat to the washroom for significant periods of time. At no time did I detect a cavalier attitude from the Tenant who is responsive to the complaints and taking them seriously. These single-sourced and unverified complaints should not jeopardize their right to stay in the rental unit.

I also give weight to the Tenant's submission regarding the age of the building, and that is a legitimate factor contributing to the travel of sound. I find it is conceivable that the building itself is contributing to the problem.

In sum, the nature of the problem prior to the landlord issuing the Two-Month Notice is not illustrated with sufficient evidence from a variety of sources to show that it is an objective measure. The Landlord followed up with more evidence from the months after they issued the notice; however, as I explained to the parties in the hearing my concern is whether the Landlord's issuance of the One-Month Notice is valid based on events leading up to that One-Month Notice.

For these reasons, the landlord has not met the burden of proof to show the One-Month Notice is valid. I order that the One Month Notice is cancelled.

As the Tenant was successful in this application, I find the Tenant is entitled to recover the \$100.00 filing fee paid for this application. I authorize the Tenant to withhold the amount of \$100.00 from one future rent payment.

Conclusion

For the reasons above, I order the One-Month Notice issued on December 18, 2021 is cancelled and the tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: April 1, 2022

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Residential Tenancy Branch