



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes** CNC

### **Introduction**

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant attended the hearing and was represented by legal counsel (DMc), who spoke on behalf of the tenant. The tenant's father attended as a witness. The landlord was represented at the hearing by an agent of the landlord (the "**landlord**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The landlord advised that the One-Month Notice (the "**Notice**") was served to the tenant by posting the notice on the door, August 12, 2022. The tenant acknowledged receipt of the Notice and filed for Dispute Resolution on August 15, 2022. I find that the Notice was served on the tenant in accordance with s. 88 of the Act.

The parties each acknowledged receipt of the others application materials and raised no objection with respect to service. I find pursuant to s. 88 and 89 of the Act that the parties application materials were sufficiently served on the other as acknowledged at the hearing.

At the hearing, I explained the hearing and the settlement processes. The landlord stated he was directed to not negotiate a settlement but to proceed with the hearing and await my decision.

### **Preliminary Issue: Amendment of the Tenant's Application**

The tenant filed her application on August 15, 2022 under the code "CNR" (Cancellation of a 10 Day Notice for unpaid rent). The correct code is "CNC" – cancellation of the One Month Notice for Cause.

The landlord received notice of the amendment prior to the hearing and raised no objection to the amendment.

Pursuant to section 64(3)(c) of the Act, I amend the tenant's application to reflect the correct dispute code.

**Issues to be Decided**

Is the tenant entitled to:

- 1) an order cancelling the Notice?

If the tenant fails in her application, is the landlord entitled to:

- 1) an order of possession?

**Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written month to month tenancy agreement starting November 1, 2020. Rent was set at \$826.00. Monthly rent is subsidized. The tenant currently pays \$472.00, which is payable on the first of each month. The tenant paid the landlord a security deposit of \$413.00 and a pet damage deposit of \$413.00. The landlord still retains these deposits.

The Tenancy Agreement includes a pet clause that reads:

33. PETS. Unless specifically permitted in writing in advance by the landlord, the tenant must not keep or allow on the residential property any animal, including a dog, cat, reptile, or exotic animal, domestic or wild, fur bearing or otherwise. Where the landlord has given his permission in advance in writing, the tenant must ensure that the pet does not disturb any person in the residential property or neighboring property, and further the tenant must ensure that no damage occurs to the rental unit or residential property as a result of having or keeping the pet. This is a material term of this Agreement. If any damage occurs caused by the pet, the tenant will be liable for such damage and will compensate the landlord for damages, expenses, legal fees and/or any reasonable costs incurred by the landlord. Further, if the landlord gives notice to the tenant to correct any breach and the tenant fails to comply within a reasonable time, the landlord has a right to end the tenancy along with making the appropriate claims against the tenant. Having regard to the potential safety issues, noise factors, health requirements, and mess, the tenant will not encourage or feed wild birds or animals at or near the residential property.

Any term in this tenancy agreement that prohibits or restricts the size of a pet, or that governs the tenant's obligations regarding the keeping of a pet on the residential property is subject to the rights and restrictions under the Guide Animal Act.

The Tenancy Agreement contains a conduct clause.

34. CONDUCT. In order to promote the safety, welfare, enjoyment, and comfort of other occupants and tenants of the residential property and the landlord, the tenant or the tenant's guest must not disturb, harass, or annoy another occupant of the residential property, the landlord, or a neighbor. In addition, noise or behavior, which in the reasonable option of the landlord may disturb the comfort of any occupant of the residential property or other person, must not be made by the tenant or the tenant's guests, nor must any noise be repeated or persisted after a request to discontinue such noise or behavior has been made by the landlord. The tenant or the tenant's guest must not cause or allow loud conversation or noise to disturb the quiet enjoyment of another occupant of the residential property or other person at any time, and in particular between the hours of 10:00 p.m. and 9:00 a.m. If any tenant or tenant's guest causes another tenant to vacate his rental unit because of such noise or other disturbance, harassment, or annoyance or because of illegal activity by the tenant or tenant's guest, the tenant must indemnify and safe harmless the landlord for all costs, losses, damages, or expenses caused thereby. The landlord may end the tenancy pursuant to the Act as one of his remedies.

The reason on the Notice to end this tenancy is:

- Tenant or a person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord.

Further details on the Notice provide as follows:

[the tenant] has received 3 warning letters, issued December 11<sup>th</sup>, 2020, October 10<sup>th</sup>, 2021, and May 30<sup>th</sup>, 2022, following noise and conduct based infractions causing a loss of quiet enjoyment to those in her neighborhood; both those who are our tenants and others who are not.

The behavior has been happening consistently without improvement as we have continued to get reports and complaints from residents, (Four complaints regarding July 14<sup>th</sup>, 2022, and one regarding July 28<sup>th</sup>, 2022) explaining that [the tenant] is setting off her car alarm purposefully at night, and her dog barking into the night, there have also been police reports made regarding these issues. [reproduced as written]

The landlord testified that there are two separate noise issues that gave rise to the Notice: complaints about the tenant's dogs barking persistently and allegations that the tenant is intentionally setting off her car alarm.

The landlord described three (3) noise/conduct complaints that resulted in warning letters issued to the tenant related to the tenant's dogs.

The first warning letter is dated December 11, 2020. An unidentified tenant complained about the tenant's dogs' persistent barking since the tenant moved in on November 1, 2020. The warning letter reads:

Our office has become aware of a noise/conduct complaint that occurred in your unit on December 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup>, 2020.

“...the new tenant in 15 has two dogs that bark constantly when she is not home. For example Friday evening from 4:30 p.m. when I got home til 8:30 p.m., Saturday for two hours in the evening and Sunday three separate times throughout the day for an hour or so each. These times are typical since she has moved in. The small dog sounds terrified and is clearly not happy to be left alone. The large dog is often running around the complex with no leash..”

Effective immediately, you must ensure that the noise from your pets does not disturb your neighbours. The dogs must also be leashed at all times, while in common areas of the property.

We draw your attention to the residential Tenancy Act which states in Section 28 (b) “A tenant is entitled to quiet enjoyment including, but not limited to freedom from unreasonable disturbance.”

This letter serves as your **first written warning.**

Thank you for your anticipated cooperation.

The second warning letter dated October 1, 2021, states:

Our office has become aware of a noise/conduct complaint in relation to your unit and/or tenancy.

On October 1, 2021 it was observed that your dogs barked loudly and continuously for a long period of time.

Effective immediately, you must keep your pets’ noise at a reasonable level so as not to interfere with the quiet enjoyment of other tenants.

We draw your attention to the Residential Tenant Act which states in Section 28 (b) “A tenant is entitled to quiet enjoyment including, but not limited to freedom from unreasonable disturbance.”

Your Tenancy Agreement states **as per Section 33. PETS** the tenant must ensure that the pet does not disturb any person in the residential property or neighboring property, and further the tenant must ensure that no damage occurs to the rental unit or residential property as a result of.

This letter serves as your **second written warning. If this issue is not resolved you may receive a Notice to End Tenancy.**

Thank you for your anticipated cooperation.

The third warning letter is dated May 30, 2022 and reads as follows:

Our office has become aware of a noise/conduct complaint in relation to your unit and/or tenancy on May 24<sup>th</sup>, 2022

“...the dogs are constantly barking...”

Effective immediately, you must ensure to maintain the Quiet Enjoyment of the property, especially within the Quiet Hours of 10:00 pm-9:00am. The dog’s barking must be addressed in a prompt and reasonable manner so as to maintain reasonable noise levels within the building. You have received similar complaints on December 11<sup>th</sup>, 2020 as well as October 1<sup>st</sup>, 2021. Any additional warnings could warrant a One-Month Notice to end Tenancy.

We draw your attention to the Residential Tenant Act which states in **Section 28 (b) “A tenant is entitled to quiet enjoyment including, but not limited to freedom from unreasonable disturbance.”**

Your Tenancy Agreement states **as per Section 33. PETS the tenant must ensure that the pet does not disturb any person in the residential property or neighboring property.** Additionally, **as per Section 34. CONDUCT noise or behavior, which in the reasonable option of the landlord may disturb the comfort of any occupant of the residential property or other person, must not be made by the tenant or the tenant’s guests.**

This letter serves as your **third written warning. Additional infractions could lead to eviction.**

Thank you for your anticipated cooperation.

The landlord stated that despite the warning letters, there was no improvement.

The second issue involved complaints about the tenant’s car alarm going off at ‘all hours of the night and day’. Some of the complainants alleged that the tenant was sets off the alarm on purpose because she dislikes smoking near her rental unit. Although the additional details provided on the Notice state that the landlord received four (4) complaints regarding the July 14 car alarm incident and one complaint regarding a July 28 incident, the landlord submitted three (3) complaints in total and confirmed that there was no “July 28” incident or complaint.

In an email dated July 15 at 08:04 am complainant AU writes:

On July 24<sup>th</sup>, 2022 starting at 9:44 number 15 was turning on her car alarm off and on til 11:20 the woke up many people including me she has no respect for other tenants many people where outside yelling at her as well can you please speak to her to get her to stop this aid AU get awaken up then I am awake msny Hours thank you in advance...  
[reproduced as written]

The landlord stated that the date in the email is a typo and should have read July 14, 2022.

The landlord then asks AU for clarification:

Can you clarify if you believe she is setting her car alarm off on purpose?

Is this still an ongoing issue?

Has there been any improvement as of yet?

In a July 28, 2022 email to the landlord AU responds:

Hi yes she sets it of on purpose thst night was the worst as she set it off for hours. I heard the police were called by a tenant when the police was talking to the one who called he advised her that they had many calls in the alarm going off the alarm going off is not so frequent as she was doing it daily but last night too it went off but just the once but still annoying as she wakes me up plus her big dod was barking for hours too thank for the email back to me. [reproduced as written]

VS submitted a complaint form to the landlord dated July 15, 2022. VS writes:

The situation has not stopped. Our neighbor next door in #15 continues everyday setting off her car alarm. Lastnight from 9:30 pm-11 pm myself and a large number of neighbors across the street and along sided made reports to the police. They finally believed and gave her a warning to stop. She waited until this morning and started again. Therefore the 2<sup>nd</sup> car file #. She doesn't sleep and now I know why. Our bathroom is next to hers and smells of drugs coming through. I told neighbors across the street her unit # because they wanted to report her too. everyone is sick of it. [reproduced as written]

Under the heading, "How did you handle the situation? Did you talk to the person involved? If so, what was their response? VS writes:

Us and a large number of surrounding neighbors agreed to report her at once. non emergency line was flooded last night and this morning. everyone knows she 's doing it purposefully. [reproduced as written]

A third written complaint dated July 14, 2022, about the alarm was sent to the landlord from SJ. SJ writes:

I am writing to formaly complain about the I tenant in unit 15-xxxx xxx st. Repeatedly her car alarm goes off and her dog barks until all hours of the night. Tonight her car alarm has been going off since 2200 and is still going off as I write this complaint. I have been loosing sleep because of both of these things and I already have enough problems sleeping without the constant dog barking and car alarm going off. [reproduced as written]

Under the heading, "How did you handle the situation? Did you talk to the person involved? If so, what was their response? SJ writes:

I have spoken with her in the past regarding both issues, she said she took her car to the mechanic but still the issue of the alarm going off persists. She says nothing about her dog other than she works all day and her dog has anxiety. If these issues do not get better I will be making a police report.

The landlord did not call any witnesses.

DMc stated the tenant and her young daughter live in a multi-family complex. The community is pet friendly, with dogs in many of the rental units in the complex. There are two dogs in the unit directly below and two dogs next door to the tenant as well as across the way in unit 21. The dog in 29 "barks a lot" and the dog in unit 30 is known as the "howler". The tenants in unit 27 foster dogs. There are dogs barking all the time.

The tenant owns two (2) dogs ages 7 years and 3 years. DMc states the tenant acknowledges that the dogs sometimes bark as do all dogs. Kids will knock on the door and that will set the dogs off. When the tenant is at work, the dogs get anxious and bark sometimes. The larger dog has the louder bark. The smaller dog may bark from time to time but mostly sleeps. The tenant disputes that the dogs "bark all the time" and states that since there are dogs in surrounding units, how can the landlord definitively state that the alleged excessive nuisance barking are her dogs.

DMc points out that while the first warning letter gave specific dates, the other two warning letters issued on the basis of complaints were non-specific about any alleged incidents.

The tenant has taken several measures to control the dogs barking. On August 25, 2022, she purchased a pet safe static bark collar for the larger dog. The bark collar has trained the dog to not bark at sound and now the dog doesn't bark at noise even when the collar is off.

The tenant has also installed a camera to check in on her dogs while she is at work. She leaves the radio on for ambient noise for the small dog. The tenant has posted a note on her door asking people to not knock on the door to make the dogs bark.

When asked why the tenant did not take steps back in December 2020 to minimize any barking and keep the dogs from angering the neighbors, the tenant stated that she was home at that time and did not leave the house due to health reasons. She denied that her dogs were barking. She stated when she started working in October of 2021, her dogs were likely anxious because she was not home and did bark from time to time.

The landlord confirmed that since the One Month Notice was issued, there have been no further complaints.

DMc states the tenant denies setting off the car alarm intentionally. [The tenant] "does not and has not ever set off the alarm intentionally".

By way of background DMc states that the car is a 2011 Kia Sorento previously owned by the tenant's dad. In the Spring of 2021, the tenant's dad gave her the car. Between the Spring of 2021 and the start of Spring 2022 the tenant had no problems with the car's alarm system. In the Spring of 2022 the car alarm started to go off unprompted at various times and places throughout the day. It would go off equally at work and at home. The tenant submitted a written statement from her manager confirming the car alarm goes off intermittently.

Between May and the end of July the police were called on three separate occasions by neighbors and residents/occupants of the tenant's building complaining about the car alarm going off. The tenant submitted copies of the three police reports summarized below:

**Police Report #1 May 26, 2022 (09:48)**

On May 26, 2022 CST V was dispatched to a call of complaint from [redacted complainant] who reported that [tenant] was purposely setting off her car alarm, which had occurred twice in the last five minutes. [Complainant] stated she sets it off anytime someone smokes near they property. [Complainant] provided a BCLP# {XXXX} which matched to a blue Kia with the RO being [tenant].

Cst V attended the residence and spoke with [tenant] who advised she is in the midst of having her car looked at and has already once taken it to Canadian Tire. [Tenant] states that she is taking the vehicle to her friend's place tonight to have it fixed. Cst. V advised [Tenant] to try to have it looked at as soon as possible as it is bothering [complainant] and affecting their sleep.

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**Police Report #2: July 14, 2022 (2205)**

On 2022-07-14, at 2205 hours, Complainants [redacted] called X Police to report that [redacted], [Tenant] has been setting her car alarm on, on purpose whenever she sees any of [redacted] stepping outside for a smoke. [redacted]

Cst. K contacted [Tenant] and cautioned her regarding setting her car alarm off on purpose. [Tenant] claimed that there was an issue with her car sensor and upon changing the parking position of her vehicle, the alarm stopped. Cst. K explained to [Tenant] that [municipality] has a 24-7 noise bylaw and that if her car alarm continues to be set off, police might give her a ticket. [Tenant] was compliant with Cst. K and stated that she will make sure her car alarm will not go off again.

[redacted]

.....

**Police Report #3: July 15, 2022 (0912)**

On 2022-07-15 at 0912 hours, Com [redacted] contacted XPD advising that [redacted], [Tenant], continuously sets the car alarm off whenever she walks by. [Complainant] stated that [Tenant] does this as she does not want [Complainant] smoking near her

residence. There have been previous documented files of similar complaints associated to these parties, which have been linked to this file. Cst.D further notes file [22-XXXXX] opened on July 14, 2022. In that file, a similar complaint was received and Cst. K spoke with [Tenant] in regards to the [municipality] Noise Suppression Bylaw.

Cst. D first spoke with [Tenant] who stated that she is not setting the alarm off on purpose, however, believes that individuals in the complex do not like her and have been damaging her vehicle. [Tenant] does not want to completely get rid of her alarm as she feels it is necessary to keep the safety of her vehicle. Cst. D stated to [Tenant] that she is more than welcome to keep her alarm but it should not be going off if people are just going around it. [Tenant] then became frustrated and stated she believes people are targeting her and that she is being picked on. Cst. D advised [Tenant] that any further complaints in regards to the same circumstances, Cst. D would recommend a Notice and Order be issued to [Tenant's] vehicle to confirm that her alarm system is functioning properly. [Tenant] stated that she would have her boyfriend look at her car alarm to determine what exactly is allegedly malfunctioning. [redacted]. As noted, this is an ongoing issue with both sides continuously calling police for an issue that probably should not be a police issue in the first place. No other action taken.

.....

DMc stated that between June 27 through mid-July the Tenant was at home and did not have a problem with the alarm activating until July 14. DMc confirmed the Tenant took the following steps to determine the problem with the car alarm:

- Had the alarm system checked at Canadian Tire (prior to the May 26, 2022 complaint).
- Had her mechanic replace the fob battery in case it was a low battery causing the alarm to activate (undisclosed date)
- Had her mechanic run a diagnostic to try to identify the source of the problem but he was unable to pinpoint the problem.
  - The mechanic ran the diagnostic at 8:30 p.m. on July 14, 2022.
  - At 10:00 p.m. the alarm went off when a bush contacted the car.
  - At 10:05 the police were called.
- On the morning of July 15, 2022, the alarm went off again and the Tenant went to unlock the car to stop the alarm and by the time she went down to do so, someone had called the police. The Tenant left her car unlocked to ensure the alarm would not again go off.
- Later in the morning of July 15, 2022, the Tenant's father disconnected the alarm system.

The Tenant's father, RD, testified that the car alarm was problematic when he owned the vehicle. As the original vehicle owner, RD, submitted a written statement and provided affirmed testimony.

I am [Tenant's] Father, and I gave [Tenant] my former vehicle in June 2021; it was a blue 2011 KIA Sorento, which she currently owns. For many years I experienced ongoing issues with the horn on the KIA Sorento activating for no apparent reason. I had it serviced more than I would like to remember, but eventually I resorted to changing the battery in the FOB key of the KIA Sorento numerous times, with hopes that the horn issues would cease. So, when I transferred ownership of the KIA Sorento to [Tenant],

unfortunately the horn problems continued. I know [Tenant] tried to be careful about taking measures to ensure the horn did not activate, but we do not why this horn issue continued. [Tenant] also changed the FOB key battery a few times but the horn on the KIA Sorento, from time to time, continued to come on for no apparent reasons. [Tenant] informed me of the horn problems so her mechanic friend tried to fix the issue but the horn problem persisted. So, when I visited [Tenant] in July 2022, I removed a sensor/fuse on the KIA Sorento and since then, the horn issue has not returned.

RD states that the tenant, his daughter, is being targeted and bullied because of complaints she has made about a neighbor who smokes in the rental unit. The building is non-smoking and the smoke seeps into his daughter's rental unit. Exposure to secondhand smoke has caused his granddaughter to develop asthma. This tenant has vindictively called the police to harass his daughter for complaining about the cigarette smoke. RD stated his daughter currently has outstanding complaints about the smoking and it is his daughter who should launch a dispute resolution application against the landlord for exposure to secondhand smoke.

In summary, DMc states: the tenant does not deny the fact that sometimes her dogs bark as do other dogs in the dense urban setting of a multi-unit, multi-family, pet friendly complex. The tenant does not deny that her car alarm went off. What the tenant does dispute is that the noise has either "significantly interfered with" or "unreasonably disturbed" another occupant or the landlord such that the eviction was warranted.

The tenant asserts the reports have been exaggerated relative to the actual frequency, timing, duration, and extent/impact of the noise both from the dogs and the car alarm because of an ongoing dispute about on-site smoking. She also asserts that she has been wrongly accused of setting off the car alarm intentionally. DMc submits, notwithstanding the above, the landlord has failed to prove on a balance of probabilities that the tenant "significantly interfered with or unreasonably disturbed another occupant or the landlord".

### **Analysis**

The legal basis for the One-Month Notice is found in s. 47(1)(d)(i) of the Act, which state that a landlord may give notice to end tenancy for cause when:

- (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.

As this is a Notice to End Tenancy, pursuant to Rule 6.6 of the Residential Tenancy Branch Rules of Procedure, the onus falls on the landlord to prove that the One Month Notice was issued on valid grounds and, moreover, the landlord must prove the grounds on a balance of probabilities, meaning that "it is more likely than not that the facts occurred as claimed".

This is largely a dispute concerning the facts. Where one party submits one version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary or

independent evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden. In these circumstances, the landlord bears the burden of proving that the tenant is “significantly” interfering with or “unreasonably” disturbing another occupant or the landlord of a residential property.

In the “Details of Cause” in the One Month Notice, the landlord uses strong words and phrases to describe the alleged “noise and conduct” infractions including “consistently”, “without improvement”; “setting off her car alarm purposefully at night”; and “her dog barking into the night”. [emphasis added]

The landlord submitted three (3) warnings letters issued to the tenant resulting from complaints received about alleged barking from the tenant’s dogs. The letters neither identify the complainants nor where their rental units were in proximity to the tenant’s rental unit. The landlord did not submit into evidence the original complaints that formed the basis of the letters. Multiple complaints could have been made by one person or two or three persons could have each made one or two of the complaints.

The landlord alleges the dogs barked “into the night. I note one complaint stated the dogs barked until around 8 p.m. Employing the conventional usage of the terms evening and night – evening is typically between 5 p.m. and 9 p.m. (give or take an hour) and night follows after. While one could argue that 8 p.m. is on the cusp of night, based on the information in the warning letters, this appeared to be a one-off incident. The other two warning letters do not identify dates or times of the alleged barking incidents.

Although the first written warning letter provides specific dates on which the alleged barking took place, the tenant disputes the dates. The tenant provided undisputed affirmed testimony that she was in the rental unit throughout the month of December and did not leave the rental unit due to personal health related issues. In the absence of evidence to the contrary, I accept the tenant’s undisputed affirmed testimony as fact.

The second and third warning letters provide little evidence in terms of their substance.

The second letter references a vague alleged incident: “On October 1, 2021 it was observed that your dogs barked loudly and continuously for a long period of time.” [emphasis added] The third letter makes an equally vague allegation: ““...the dogs are constantly barking...””.

It is also important to note, that the warning letters span three years: December 11, 2020, shortly after the tenant moved into the rental unit; 10 months later, on October 1, 2021; and again on May 30 2022 some 8-9 months later. The landlord provided insufficient evidence of complaints in the intervening months to suggest there were ongoing noise issues, excessive or otherwise, from the tenant’s dogs.

The landlord provided insufficient evidence of an investigation confirming the source of the barking was coming from the tenant’s rental unit or whether the barking was from dogs in nearby/neighborhood rental units in the multi-unit pet friendly complex. The complainant or complainants did not appear at the hearing to provide testimony under oath or afford the tenant her right to cross examination.

I assign little persuasive weight to the warning letters as two of the letters do not adequately specify details of the alleged incidents, all are anonymous, none of the original complaints were provided, and

none of the complainants were called as witnesses thereby denying the tenant the opportunity of cross examination.

Based on the evidence and oral testimony as presented, I am unable to determine whether the tenant *significantly* interfered with or *unreasonably* disturbed the lifestyle of others based on the allegations of the dogs barking. The general nature of these complaints and the lack of specific information does not establish sufficient grounds for the tenant's eviction under s. 47(1)(d)(i) on a balance of probabilities.

I now turn my mind to the matter of the car alarm. The landlord wrote, "...we have continued to get reports and complaints from residents.... is setting off her car alarm purposefully at night". [emphasis added]

There are three (3) documented incidents involving the car alarm: May 26, 2022 (9:48 a.m.); July 14, 2022 (22:05); and July 15, 2022 (9:12 a.m.). The only documented incident that the car alarm went off at night was the incident of July 14, 2022. On May 26 and July 15, the car alarm went off around 0900.

The landlord submitted into evidence three (3) written complaints received by the administration regarding the car alarm.

Two of the complainants, AU and VS allege that the tenant is setting the alarm off intentionally; but provide insufficient evidence to support the allegation .

AU writes, "yes she sets it of on purpose thst night was the worst as she set it off for hours" but provides no evidence in support of her statement. AU is simply providing her opinion.

VS writes, "Our neighbor next door in #15 continues everyday setting off her car alarm". There is insufficient evidence to confirm that the tenant was setting off the car alarm intentionally or otherwise "everyday" from when she acquired the car in the Spring 2021 and the three (3) incidents that took place in 2022. While there were two (2) consecutive days where the car alarm went off (July 14 and 15), the tenant remedied the problem by having her father disconnect the alarm system and as the landlord confirmed, there have been no subsequent complaints.

On the complaint form dated July 15, 2022 describing the car alarm incident of July 14, 2022, VS writes she 'resolved' the issue by talking with "surrounding neighbors", and (inappropriately) giving those neighbors, who live across the street, the tenant's unit number, and appeared to encourage everyone to call the non-emergency police number: they all "agreed to report her at once"

Us and a large number of surrounding neighbors agreed to report her at once. non emergency line was flooded last night and this morning. everyone knows she 's doing it purposefully.

Some of what VS wrote in her complaint identify issues that are either irrelevant to the identified basis of the dispute (the tenant intentionally setting off her alarm) or are outside the scope of consideration (alleged drug use) and appear to support the tenant's assertion at the hearing and to the police that she is being "targeted". The police report confirms that multiple complainants called the non-emergency

number on July 14, 2022. For the above reasons, I assign little persuasive weight to the complaints of AU and VS.

I assign greater persuasive weight to the written complaint submitted by SJ. SJ states she spoke to the tenant about the noise from the dogs and car alarm and stated if it persisted, she would then contact the police. The complainant is silent on whether she believes the tenant intentionally set off the car alarm. Further, SJ does confirm the tenant's testimony about taking the car to her mechanic to identify the problem with the alarm system.

There is no dispute the car alarm sounded at approximately 10 p.m. on July 14, 2022 prompting SJ to submit a formal complaint. SJ also wrote: "Repeatedly her car alarm goes off and her dog barks until all hours of the night" . The statement is broad and SJ provides no specific information about what she meant by "repeatedly" and provided no additional dates/times regarding the dog (singular) barking "until all hours of the night".

While there was a confirmed car alarm incident on May 26, 2022, the landlord has provided insufficient evidence to confirm that between May 27, 2022 and July 14, 2022 there were further car alarm incidents. No further police incident reports were submitted to file by either the tenant or the landlord.

Again, the landlord failed to investigate. There is insufficient evidence to confirm that the tenant versus another occupant of the residential property intentionally set off the car alarm or if, as the tenant and her father testified, the problem was with the vehicle itself.

In cases where there is no dispute that a tenant has breached the Act or a tenancy agreement, third party written complaints may be sufficient to prove a ground for eviction. Where the tenant and the tenant's counsel question the very nature and substance of those complaints, I must, in the absence of the complainants testifying on their own behalf, give the written complaints little evidentiary weight. These complaints were not submitted into evidence by way of sworn affidavit or affirmed testimony and under the circumstances did not afford the tenant her right to cross examine the complainants. For these reasons I place little evidentiary weight on the substantive evidence put forward by the landlord.

Any kind of noise coming from or attributed to a rental unit that can be heard by another occupant can be considered a "disturbance" whether it is a barking dog or a car alarm or music or a loud conversation. What I must decide is if such disturbances warrants ending the tenancy. In determining the reasonableness of certain disturbances, several factors can be considered including the time, duration, frequency and volume of the disturbances.

Taking into careful consideration the oral testimony and the documentary evidence presented and applying the law to the facts, I am unable to conclude the above considerations (time, duration, frequency, or volume) can be discerned from the broad vague statements to show the tenant 'significantly' and/or 'unreasonably' interfered with the quiet enjoyment of the landlord and/or occupants of the residential property.

I find on a balance of probability that the landlord has not discharged his onus under s. 47. The landlord failed to establish a clear sequence/pattern of events, along with evidence of complaints, audio

recordings, video recordings or investigative findings to establish that the noise is frequent enough and excessive enough to constitute “significant” and “unreasonable” disturbance.

The tenant’s application to cancel the One Month Notice for Cause is granted

**Conclusion**

The One Month Notice is cancelled and is of no force and effect. The tenancy will continue until otherwise 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: December 3, 2022

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Residential Tenancy Branch