



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      **CNC-MT, 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;

Leave to have the application heard after the time to dispute the notice to end tenancy has passed pursuant to section 66;

Authorization to recover the filing fee from the other party pursuant to section 72.

Both landlords attended the hearing and the tenant TM attended the hearing with an advocate, PL. The landlords acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package and the tenant acknowledged service of the landlord's evidence. Neither party had issues with timely service of documents.

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") and 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.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

### Preliminary Issue

The tenant sought more time to file her application for dispute resolution, indicating she was personally served with the landlord's notice to end tenancy for cause on December 1, 2022 and filed her application to dispute it on January 12, 2023. I note that January 12<sup>th</sup> is a Monday and the last day to file her application to dispute the landlord's notice to end tenancy fell on a Sunday, January 11, 2023.

Under the definition of "days" in the Residential Tenancy Branch Rules of Procedure, If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open. I determined that the last day to file the application for dispute resolution to dispute the landlord's notice to end tenancy was Monday, January 12, 2023 and the tenant did not need to make an application for more time to file it under section 66 of the Act.

#### Issue(s) to be Decided

Should the landlord's notice to end tenancy for cause be upheld or cancelled?  
Can the tenant 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.

On December 1, 2022, the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause for the following reason:

*the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;*

The landlord testified that the rental unit is in a home with three separate units: upper, middle and lower. The tenants occupy the middle unit. The landlord has been trying to provide clean, accommodations to tenants at a reasonable price and since the tenant

family moved into the middle unit, the landlord has not been able to retain tenants in the lower unit. There have been 3 previous failed tenancies; the landlord is now on a 4<sup>th</sup>; and the reason the lower unit tenants move out is due to the noise from the middle unit tenants.

The landlord sent a text to the tenants on October 7, 2021, advising the tenants that the tenant below them says he is having trouble with basic noise during the day as he works nights and sleeps during the day. That tenant moved out in January 2022. The next occupant of the lower unit was the tenants' son, but he only stayed until June 2022. A third tenant recorded a video of the sounds of children running back and forth across the floor (presented as evidence for this hearing). This tenant moved out on December 1, 2022, the same day the landlords served the notice to end tenancy for cause. Currently, there is a fourth occupant to the lower unit, but the landlords described him as putting up with the noise because he cannot find other accommodations in the city at that price.

The tenant testified that, other than the text on October 7, 2021 and a conversation with the landlord on October 28<sup>th</sup>, 2022, the landlord has never given her any warnings regarding loud TV and music after 11:00 p.m. The noises heard during the day are to be expected in a household with two toddlers and a nine-year-old. While it was unfortunate for the occupant of the lower unit to work nights and sleep days, the landlord cannot expect the tenant's children from not making noise during the day.

The tenant argues that the video taken of the noise heard by the lower unit tenant on November 4, 2022 has a time stamp of 12:48 p.m. which is in the middle of the day when children are expected to make noise as well.

### Analysis

The tenant was served with the landlord's 1 Month Notice to End Tenancy for Cause on December 1, 2022 and filed the application to dispute it on Monday, December 11<sup>th</sup>, within the 10 day time frame as required under section 47 of the Act.

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. 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 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 matter before me, I find the landlord has not provided sufficient evidence to satisfy me the tenant has done so.

I first turn to the tenancy agreement signed by the parties. It states the names of the tenants residing in the home are TM (mother), DM (father) PM (daughter), JG (son) SG (grandson) and LG (grandson). I have withheld the names for the privacy of the tenants. It is apparent to me that the landlords knew and understood that they were renting the middle unit of a triple layered house to a family of 6 which includes a young girl (8 years old at the time) and two toddlers (the grandsons.) It would be reasonable to assume that the children would not be able to control the sounds of running across the floor and making noise that would disturb tenants below. I reviewed the landlord's video evidence and I find the noise heard is that of children running across the floors.

While I sympathize with the tenant who has to live below the tenant's children, I do not find the noise to constitute an unreasonable disturbance to the occupant below, given the makeup of the family above. I find the noise to be both reasonable and expected. To be clear, the landlord ought to have considered the potential for a family of 6 with young children (as stated in the tenancy agreement) to make more noise than a single family or a couple.

The landlord has also testified that the tenant and her family cause significant interference to other occupants by making noise, specifically loud TV and music after 11 p.m. The Merriam-Webster dictionary defines **significant** as, "*having or likely to have influence or effect, of a noticeably or measurably large amount*". I have insufficient evidence to corroborate this allegation of a significant interference to another occupant. In evidence, the landlord provided 2 texts from the lower unit occupant "V" but I cannot conclude from these complaints that the music or TV noise is incessant or constant after 11 p.m. Moreover, the complaint from the occupant before "V" complained of "basic noise during the day". I cannot conclude the tenants made significant noise at night, based on the evidence before me.

Lastly, the tenant's advocate points out that the landlord did not provide sufficient notice to the tenants that their behaviour is disturbing others. The landlord did not provide a reasonable time for the tenants to correct the behaviour. It would be unjust to end the tenancy without giving the tenant sufficient notice of a breach of the terms of the tenancy agreement, the regulations or the Act.

Based on the foregoing, I find the landlord has provided insufficient evidence to satisfy me the tenant has significantly interfered with or unreasonably disturbed another

occupant or the landlord. Consequently, I do not uphold the landlord's 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 also entitled to recovery of the \$100.00 filing fee for the cost of this application. In accordance with the offsetting provisions of section 72, the tenant may reduce a single payment of rent owing to the landlord by \$100.00.

#### Conclusion

The notice to end tenancy is cancelled and of no further force or effect. This tenancy shall continue until it is 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: April 21, 2023

---

Residential Tenancy Branch