



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      CNC MNDC

### Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy and for monetary compensation. The tenant, an agent for the landlord and a witness for the landlord participated in the teleconference hearing.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the tenant entitled to monetary compensation as claimed?

### Background and Evidence

The tenancy began on July 1, 2010. The rental unit is an apartment in a multi-dwelling building. On February 17, 2011, the landlord served the tenant with a one month notice to end tenancy for cause. The notice indicates three causes for ending the tenancy:

The tenant has:

- a) significantly interfered with or unreasonably disturbed another occupant
- b) seriously jeopardized the health or safety or lawful right of another occupant
- c) put the landlord's property at serious risk

In the hearing, the landlord stated that they had alleged the above three causes out of an abundance of caution, but agreed that the first alleged cause, that the tenant unreasonably disturbed another occupant, was the primary allegation.

The landlord's evidence regarding the notice to end tenancy was as follows. On October 14, 2010 the landlord received a complaint from a tenant in another rental unit about a lot of noise coming from the tenant's unit during the late evening hours. The complaining tenant stated that the nuisance behaviour had started in the summer, and had not stopped. The landlord wrote a letter to the tenant, informing him of the noise complaint and asking him to remedy the situation.

On December 16, 2010, the landlord received another complaint from a second complaining tenant, who had been disturbed by excessive noise coming from the tenant's unit on an almost nightly basis. The second complainant described noise as profane language, shouts and screams, and stated that the situation was becoming intolerable.

After receiving this second complaint, the landlord immediately contacted the tenant. The landlord and the tenant met, and the tenant explained to the landlord that he suffered from severe sleep apnea, which caused extreme snoring and flailing of his arms and legs in sleep. The tenant stated that he was on a waitlist for surgery. The landlord asked for the tenant's permission to share this information with the complaining tenants, and the tenant agreed. The landlord also told the tenant that they would look into soundproofing the tenant's apartment.

When the landlord informed the complaining tenants of the tenant's sleep apnea, the complaining tenants gave the landlord further details of the noises emanating from the tenant's apartment. One complainant expressed the view that the noises were not just typical symptoms of sleep apnea, such as snoring, gasping or choking; the noises include aggressive screaming and swearing for one or two hours any time between 10:00 pm and 2:00 am.

One of the complaining tenants appeared as a witness for the landlord and gave oral testimony in the hearing. The witness stated that since the tenant moved in last summer, she has not had more than three quiet nights in a row, and that in the month of January 2011 her sleep was disturbed on 18 of 31 nights. She also stated that she was feeling physically and emotionally exhausted as a result of the constant noise disturbances, that it was taking a toll on her health, and that she has lost 18 pounds since Christmas.

The landlord submitted copies of recent complaint letters from tenants in three units, all of which detail ongoing noise disturbances emanating from the tenant's unit. One of the complainants detailed noises that disrupted their sleep on seven of eight nights from February 17 to 24, 2011. On the last of these dates, the complainants were forced to sleep on their couch. These tenants were requesting a reduction in their rent as compensation for their loss of quiet enjoyment. Other complainants were threatening to move out if the noise issues were not addressed.

On January 24, 2011 the landlord served the tenant with a notice to end tenancy for cause, but mistakenly cited the reason for ending the tenancy was that the tenant was engaged in illegal activity that adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant. The tenant successfully applied to cancel that notice. On February 17, 2011 the landlord issued the new notice to end tenancy for cause. The landlord stated that he believed the "proper, correct and right thing is that the tenant moves on."

The tenant's response to the notice to end tenancy was as follows. The tenant does not want to affect the quiet enjoyment of others, and all of the disturbances he has caused have been involuntary, because of his medical condition. The tenant suffers from severe sleep apnea, which means that on average he stops breathing 39 times per hour while sleeping. This causes him to moan, groan and grunt, as well as flail his arms and legs. The tenant was also diagnosed with associated parasomnias that cause him to have nightmares and to yell out and scream in his sleep. The tenant provided a doctor's note that identifies these diagnoses. He has been working with doctors to diagnose and remedy his condition, including participating in an overnight sleep study and trying to find a prescription remedy. The tenant is on a two-year waitlist for surgery. The tenant also stated that he never has guests, so he would never have someone banging on his door late at night. The tenant seeks to have the notice to end tenancy cancelled.

The tenant's evidence on his application for monetary compensation was as follows. The tenant submitted that his quiet enjoyment has been disturbed by the landlord's harassing actions. The tenant felt harassed by the landlord when they served him with the first one month notice to end tenancy, and he was greatly troubled by the landlord's allegation that he was doing something illegal. In addition to the noise complaints, the landlord provided extensive evidence regarding the tenant's smoking, even though the tenant indicated he was a smoker in his tenancy application and the tenancy agreement does not forbid smoking. The landlord also improperly served the tenant with a 10 day notice to end tenancy for unpaid rent on February 2, 2011, when the tenant had in fact electronically paid his rent when it was due on February 1, 2011. The tenant has filed a complaint with the Human Rights Tribunal, alleging that the landlord has discriminated against him based on his physical disability. The tenant feels very frustrated by the landlord's actions, and he has applied for compensation of \$500 per month for the months of December 2010, January 2011 and February 2011.

The landlord's response to the tenant's monetary claim was that he failed to understand the tenant's claim. The landlord has simply been responding in a responsible manner to complaints by other tenants.

### Analysis

Although the tenant did not provide a great deal of supporting evidence regarding his physical ailments, I found his testimony to be sincere and credible. I accept his evidence that the noises he is causing at night are likely a result of his sleep apnea and associated parasomnias, and that he is causing those noises involuntarily.

However, these noises have been and continue to be clearly and significantly disturbing tenants in three other units. Furthermore, although the tenant stated that he has been pursuing remedies to his sleep apnea, I am not persuaded that he has taken all reasonable steps available to him to improve his condition. It is not reasonable for the tenant to expect neighbouring tenants to endure ongoing noise disturbances until such time as he has corrective surgery. The landlord has a clear obligation under the Residential Tenancy Act to safeguard the quiet enjoyment of the neighbouring tenants.

I find that the tenant has been unreasonably disturbing other occupants, and the notice to end tenancy is therefore valid. Under section 55 of the Act, when a tenant applies to cancel a notice to end tenancy, I must grant an order of possession if I uphold the notice and the landlord makes an oral request for an order of possession during the hearing. In this case, the landlord did not make an oral request for an order of possession, and I accordingly decline to grant an order of possession at this time. It is open to the landlord to make an application for an order of possession pursuant to the notice to end tenancy.

In regard to the tenant's claim for monetary compensation, I find as follows. The tenant did not provide sufficient evidence to establish that the landlord was acting in a harassing manner when they issued the first one month notice to end tenancy for cause or the 10 day notice to end tenancy for unpaid rent. I therefore dismiss the tenant's monetary claim.

Conclusion

The tenant's application is dismissed in its entirety.

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 17, 2011.

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Residential Tenancy Branch