



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the tenants' application to cancel a Notice to End Tenancy for Cause and to recover the filing fee paid for this application. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

### Issue(s) to be Decided

Should the *1 Month Notice to End Tenancy for Cause* be upheld or cancelled?

### Background and Evidence

The tenancy commenced January 5, 2011 and the tenants are required to pay rent of \$1,500.00 on the 1<sup>st</sup> day of the month. The rental unit is a condominium located on the fifth floor of a multiple-family building.

On July 26, 2011 the landlords served the tenants with a *1 Month Notice to End Tenancy for Cause* (the Notice). The reasons for ending the tenancy, as indicated on the Notice, are:

- Tenant has engaged in illegal activity that has, or is likely to:
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The landlords acknowledged that they erroneously indicated the tenants were involved in illegal activity on the Notice.

With respect to a breach of a material term, the landlords explained that the tenancy agreement provides for a term that receipt of a noise complaint is grounds for ending

the tenancy. The landlords stated, and the tenants acknowledged, that the tenants were notified, via email, about the complaints the landlords had received from a neighbour (the complainant).

The parties provided the following undisputed testimony:

- The complainant had made complaints about the noise generated by the previous tenants living in the rental unit.
- In entering into this tenancy the landlords emphasized to the tenants that they had to live a quiet lifestyle.
- The neighbour residing in the unit below the rental unit (the complainant) has complained on behalf of her father residing in the unit adjacent to the rental unit about excessive noise levels coming from the rental unit.
- The complainant has attributed excessive noise to the tenants when it was not them making the noise, such as construction noise coming from the sixth floor.
- The landlords and tenants agreed that the TV volume would not exceed a certain level after determining the level that could be heard next door.
- After a certain complaint the male tenant went next door in an attempt to record what noise could be heard in the adjacent unit and nothing discernable was recorded.

The tenants submitted that they have not had the TV volume anywhere near the maximum level the parties agreed upon. The tenants do not have a sub-woofer installed. The tenants are rarely home as they are often out of town or working. One complaint they received was in response to the tenants having a family dinner.

The landlords stated that in July 2011 they asked the complainant to phone them while excessive noise is taking place so that the landlords can observe the noise level for themselves. The complainant has not called the landlords since this request was made of the neighbour.

Documentary evidence provided for this hearing consisted of the Notice to End Tenancy and the landlords' letter that accompanied the Notice; and, the tenants' written response to the landlord's letters.

### Analysis

Where a Notice to End Tenancy comes under dispute the landlord bears the burden to prove the tenancy should end for the reasons indicated on the Notice. The burden of proof is based on the balance of probabilities.

Upon hearing from the parties, I find that there has been no illegal activity taking place in the rental unit and this is not a reason to end the tenancy.

In the absence of a copy of the written tenancy agreement or the written notices issued to the tenants with respect to a breach, I find insufficient evidence to end the tenancy for breach of a material term.

Section 47 of the Act does provide that a landlord may end a tenancy where the tenant has significantly interfered with or unreasonably disturbed another occupant. This is the provision most often used where a tenant is unreasonably disturbing others with excessive noise levels. Although the landlords did not indicate this reason on the Notice, it was clear upon hearing from the parties that their dispute involved noise complaints and I considered this provision of the Act in resolving this dispute.

As mentioned to the parties during the hearing, almost every occupant will make noise that will eventually be heard by another occupant in multiple family buildings. The level and frequency of the noise will depend on several factors, including: construction of the building, flooring materials, insulation, and the like. In order to evict the tenant it must be shown that the tenant's actions have unreasonably disturbed another occupant meaning, a tenant cannot be evicted merely because they have been heard or have on occasion disturbed another occupant. Unreasonable disturbance would include excessive noise which is noise that is exceptionally loud or on-going, but does not include normal sounds from normal daily activity.

Upon hearing from the parties, I am satisfied the tenants spend a significant amount of time away from the rental unit and when they are home they keep their TV volume below the level determined acceptable by the parties, they do not have a sub-woofer installed, and they do not have frequent or loud parties. I find that occasional family dinners are a normal activity that the tenants are entitled to enjoy under the rights afforded to them by the Act.

In contrast, I heard the complainant had made noise complaints about the previous tenants, the complainant has asked the tenants to keep their noise levels down at all times of the day, other neighbours have not complained about the tenants, and the complainant has not phoned the landlords to report a noise disturbance as they

requested. These factors suggest to me that the complainant may be ultra-sensitive to noises that are to be expected in multi-family buildings.

In light of the above, I do not find sufficient evidence the tenants are excessively noisy or have unreasonably disturbed another occupant.

I encourage the parties to continue to work together in an effort to deal with the neighbour's complaints, if there are any future complaints. Further, it will be upon the landlords to determine whether the tenants are being unreasonably noisy based upon their own investigation rather than rely upon unverified complaints of one neighbour.

Since the landlords did not establish the tenancy should end for the reasons provided on the Notice, or because the tenants have unreasonably disturbed another occupant, I cancel the Notice to End Tenancy with the effect that this tenancy continues.

The tenants are awarded the filing fee they paid for this application. The landlords may pay this amount directly to the tenants. Alternatively, the tenants are authorized to deduct \$50.00 from amounts otherwise payable to the landlord, including rent.

### Conclusion

The Notice to End Tenancy has been cancelled and the tenancy continues. The tenants are awarded the filing fee of \$50.00 paid for this application.

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: August 18, 2011.

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Residential Tenancy Branch