



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was sufficiently served on the Tenant on June 28, 2013. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on July 12, 2013. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated June 20, 2013?

### Background and Evidence

The tenancy began on April 1, 2006. The present rent is \$1184 per month payable on the first day of each month. The tenant paid a security deposit of half of the rent which he thought was \$500 at the start of the tenancy.

The landlord seeks to end the tenancy on the basis the tenant or person permitted on the rental property has significantly interfered with or unreasonably disturbed another occupant or the landlord by causing excessive noise.

Briefly, the relevant evidence relied on the landlord is as follows:

- Over the years the tenant has almost continuously shared the rental unit with a number of roommates.
- The tenant is employed in the food and beverage industry and works usual hours from late in the afternoon/early evening until after midnight.
- He received a number of complaints which resulted in a warning letter dated April 2, 2011, March 28, 2012 and April 12, 2012.
- On November 26, 2012 the tenant and the then resident of unit #1105 received a warning letter about noise and notification that if there are any further occurrences the landlord would serve a Notice to Terminate.
- The tenant in unit #1105 was evicted for cause on March 31, 2013
- Witness #3 testified that she lives in the rental unit underneath the tenant and the tenant is often noisy. She does not complain if the noise is on weekends. However, the tenant is excessively noisy every second days. She e-mailed the landlord on three occasions. The e-mail dated March 26, 2013 stated that last night between 2 – 4 she thought there was a bowling alley above her. This wasn't the first time this has happened. There were times when they moved furniture. On April 25, 2013 she e-mailed the landlord a second time stating that last night between 3:30 and 5:30 p.m. it was the same storey and she thought it was someone rollerblading in the apartment above. There was also a lot of screaming and noise.
- In late April the landlord met with the tenant and served a one month notice. The tenant told the landlord that the downstairs tenant must be referring to a rolling office type chair and he agreed to get rid of it. He also promised to that steps to deal with the noise from roommates. The landlord agreed to withdraw that Notice.

- On June 17, 2013 she sent a third e-mail saying there was “pounding and pitching” between 2:30 and 5:30 a.m. from the apartment above. It was non-stop pounding and rollerblading.
- Witness #3 attended at the hearing and confirmed that the noise has significantly interfered with her enjoyment of the rental property.

The tenant testified at the hearing and disputed many of the allegations of the landlord and the landlord’s witnesses.

- He denied that he has ever used the rental unit as a bowling alley or for rollerblading.
- The tenant underneath him has never talked to him about noise complaints. He has a good relationship with her and in fact at one time she gave him some spices.
- He acknowledged having a discussion with the landlord at the end of April where the landlord told him of the complaints of the tenant living underneath him. He said it might have been caused by the rolling office type chair and he agreed to get rid of it. He testified he got rid of it a short time later.
- He testified the noise complaints referred to in the 2011 and 2012 were caused by the tenant in the adjoining unit who was subsequently evicted for cause in March 2013.
- He is not aware of anyone else making a complaint against him including the representative of the landlord who lives on the same floor as him.
- The landlord has proposed an arrangement whereby the tenant would move to a lower floor. That offer has since been withdrawn by the landlord.
- At no time did the downstairs tenant or the landlord knock on his door or telephone him saying the noise was excessive and asking that he deal with the situation.
- His girlfriend who is a student has lived with him for the last year.

## Analysis

The landlord has the burden of proof to establish sufficient cause to end the tenancy on a balance of probabilities. After carefully considering all of the evidence I determined the landlord has failed to establish sufficient cause for the following reasons:

- There is insufficient evidence that I can determine that the complaints leading to written warning letters which occurred in 2011 and 2012 were caused by the tenant. The people who made the complaints did not testify. The landlord was also dealing with a tenant in the neighbouring unit over noise complaints at the same time. That tenant was evict at the end of March 2013 and it is not possible to determine who caused the earlier noise problems.
- The landlord discussed the first two noise complaints of Witness #3 in late April. I do not accept the evidence of Witness #3 that the noise she was hearing was caused by rollerblading or a bowling alley. The tenant's explanation that it was caused by a rolling office chair on a hardwood floor is more reasonable. The tenant offered to and did get rid of that office chair on wheels.
- The building manager confirmed she keeps a log and that she attends late at night where there is a complaint. The downstairs tenant did not contact the landlord at the time of the disturbance. Rather, she contacted the landlord the next day. As a result it was not possible for the building manager to investigate while the noise was occurring. If the downstairs tenant had phone the building manager at the time, the building manager could have contacted the tenant and the disturbance could have ended ? Also It would also give the parties an opportunity to determine exactly what was causing the problem.
- There is no evidence of complaints from other tenants in the rental property.
- The landlord proposed a settlement with the tenant whereby the tenant would move to a lower floor. I infer from this conduct that the landlord wanted to deal with the concerns of the downstairs tenant but at the same time did not consider the tenant to be a problematic tenant.

- While the tenant was not able to provide an adequate explanation for the noise complaint that was made on June 17, 2013 I determined this is insufficient to end the tenancy.
- The tenant alleged the landlord was attempting to evict him in order to rent the premises for a higher rent. There is no evidence to support this allegation.

**Based on the totality of the evidence I determined the landlord has failed to establish sufficient grounds to end the tenancy. As a result I ordered that the Notice to End Tenancy dated June 20, 2013 be cancelled.** The tenancy shall continue with the rights and obligations of the parties remaining unchanged. The Application for Dispute Resolution does not ask for an order that the landlord pay the cost of the filing.

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 16, 2013

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Residential Tenancy Branch

