



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MT, CNC, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order permitting more time to dispute a notice to end tenancy, for an order cancelling a notice to end tenancy, and to recover the filing fee from the landlord for the cost of the application.

The landlord and both tenants attended the hearing, the parties provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other, and the landlord called 2 witnesses. The parties and the witnesses each gave affirmed testimony and the parties were given the opportunity to cross examine each other and the witnesses on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing, one of the tenants advised that the Tenant's Application for Dispute Resolution was filed within the time required under the *Residential Tenancy Act*, and I therefore dismiss that portion of the application.

### Issue(s) to be Decided

The issue remaining to be decided is:

- Has the landlord established that the notice to end tenancy was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

The landlord testified that this fixed-term tenancy began on July 1, 2013 and reverted to a month-to-month tenancy after a year, and the tenants still reside in the rental unit. Rent in the amount of \$1,600.00 per month is payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$800.00 which is still held in trust by the landlord and no pet damage deposit was collected.

The landlord further testified that the rental unit is in a complex that contains a basement suite and the tenants reside in the upper level. Another tenant currently resides in the lower level and moved in on November 1, 2013 on a 1 year lease. That tenant called the landlord's brother, who acted as landlord for the landlord on occasion, complaining about noise from the upper level and that the tenants in the upper level argued constantly. She also complained that the parking spot in the driveway that was included with her rent was used by the tenants in the upper level.

On December 8, 2013 the RCMP were called to the rental unit in the upper level due to a complaint of a domestic dispute and physical altercation. The landlord's brother spoke to the tenant about it and of other complaints received, and the tenant advised that the tenants were trying to work through their problems. The landlord's brother had received 4 text messages from the tenant in the lower level complaining about a concern for the safety of herself and her daughter, and saying that it was completely unacceptable for it to happen regularly for both families, extremely disrespectful, and complaining about loud music, fighting, and that if it doesn't stop, the tenant in the lower level will be moving out. The last message states that the tenant could not take it anymore; it was not a healthy environment for her daughter, and on March 15, 2014 the tenant moved out.

A new tenant moved into the lower level on May 1, 2014 and the same problems have arisen. The new tenant is elderly with health issues, but tried to resolve the problems on her own. On September 28, 2014 the police were called again about a domestic disturbance in the upper level. The landlord was notified and spoke to the tenant who again advised that the couple was dealing with their issues.

The new tenant in the lower level also had company, who refused to stay in the rental unit over night due to the noise upstairs and instead stayed in a hotel. The new tenant tried to talk to the tenants in the upper level, but the response was that the tenant didn't care and told the tenant from the lower level to take a hike. The tenant from the lower level ended up in hospital close to having a stroke due to the stress and disruptive behaviour of the tenants in the upper level.

The landlord served the tenants with a 1 Month Notice to End Tenancy for Cause on October 22, 2014 by posting it to the door of the rental unit. A copy has been provided, and it is dated October 22, 2014 and contains an expected date of vacancy of December 1, 2014. The reason for issuing the notice is: "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's first witness testified that she is a tenant in the lower level of the rental building and was there for about 3 weeks when she heard fighting by the tenants upstairs. The witness complained to the landlord, and the disturbances have been ongoing since moving into the building in May, 2014. The witness testified that a child in the upper level also runs around and makes noise, and even the child's grandfather was annoyed. The witness further testified that the fighting between the adults is on-

going and the police were called. The witness does not know who called the police, but the female tenant in the upper level was loud and screaming. The witness testified that the last time the witness asked them to keep the noise down the tenant upstairs cursed and yelled at the witness saying that he was tired of the complaining. He also uttered some rude language and gesture to the witness. The witness stated there was no point complaining to the tenants upstairs anymore. The witness has high blood pressure and is not supposed to get upset but was that night and went to hospital.

The witness also testified that on another occasion, the witness' daughter was visiting and they heard a lot of banging upstairs. The witness' daughter thought perhaps someone needed assistance, but discovered that the noise was caused from chopping vegetables. Also, the phone can be heard ringing from one rental unit to the other, as well as conversations.

The witness also testified that she does not want to move out of the rental unit but if things don't change, she won't be able to live there because the noise is too bad. The witness also complained quite often to the landlord.

The witness also testified that she had guests visiting and had planned to spend the night, but one of them was not able to stay due to the noise upstairs. One guest stayed in the rental unit, but the other went to a hotel.

The landlord's second witness testified that the witness and the landlord built the rental complex, which consists of an up-down duplex and the ceiling in the basement was insulated with a sound barrier for privacy to the best of their ability. Each of the 2 units has separate access and entirely separate living quarters. The landlord company is a "warranted" home building company that builds about 15 homes per year and has a great track record.

He further testified that people moved into the basement suite after the tenants in the upper level moved in, and the landlord started to get complaints about disrespectful behaviour. Police had been called and the witness had a discussion with the male tenant in the upper unit about minimizing disturbances, but nothing worked. The tenant told the witness that the tenants were having issues and trying to work through them. For the last 6 months or so, the tenants have been very disrespectful to the tenants in the lower level and not very responsive to providing a positive, quiet environment within the house.

The witness also testified that previous tenants in the lower level prior moved out because they wanted a bigger kitchen and a rental unit closer to work. They only resided in the lower level for about a month and a half. Both worked full time and weren't home much.

The first tenant testified that the tenants are good people; a hard-working young family, and have never missed a rent payment. He stated that the allegations are all hear-say,

and that problems existed between the tenants in the lower level from the beginning of that tenancy. No problems have existed in the last 5 months.

The tenant further testified that the children are in bed by 8:00 every night, and the tenants spend about an hour every morning getting ready for school. One child is in daycare full time and the other in school, so neither of them are in the house during the day.

The tenant further testified that the house is not built to prevent noise between the suites. The rental unit has laminate flooring, and there is nothing preventing the noise from travelling. The tenants are like any other family and have disagreements and arguments. He stated that if he lived in the lower level and had complained to the landlord on numerous occasions and nothing was done, the tenant would probably call the police, however no charges have been laid. He also testified that the first tenant who moved out was looking for a way to break her lease so that she could move in with her boyfriend.

The tenant further testified that on one occasion, the tenant from the lower level went to the rental unit upstairs while the children's grandfather was reading them a story and the tenant from the lower level told the tenant to shut up their kids. The tenant told her to take a hike and get off the tenant's front steps.

The second tenant testified that the kids occupy the main floor for about 2 hours per day. She is very conscious of them and gets made at them for even dropping a marble on the floor. She also testified that it's stressful for everyone involved because the tenants can hear each other. She stated that the living conditions for both units are unreasonable, but the tenants are not prepared to move out now.

The tenant also testified that she is very respectful, however police have attended the rental unit due to noise complaints, but she is not sure who called. She stated that the rental unit is in a high density area, and the tenants have spoken to the planning department who advised that the home is zoned single family and that a secondary suite is not permitted. The tenant believes the landlord is attempting to get more money for the suite but can't do so unless the tenants move out.

### Analysis

Where a tenant disputes a notice to end the tenancy given by the landlord, the onus is on the landlord to establish that it was issued according to the *Residential Tenancy Act*, which can include the reasons for issuing it. The *Act* also specifies what reasons can be used to end the tenancy. I have reviewed the 1 Month Notice to End Tenancy for Cause, and I find that it is in the approved form and contains information required by the *Act*. With respect to the reasons for issuing it, specifically, "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord," the tenants testified that the flooring in the rental unit is not sound-proofed and that the lower level suite isn't even permitted by the

zoning for that area. They further testified that they are a normal family, who has disagreements. However, the landlord's agent and the landlord's witness both testified that police were called, and the landlord's witness testified that it was not her that called the police and one of the tenants testified that she doesn't know who called the police. Therefore, I find that it was not the witness and therefore, the lack of a sound barrier between the floors is not the issue because someone else called the police for a domestic dispute. I find that the tenants in the lower level have been disturbed, the police have been called due to domestic disputes, and the *Act* states that where a tenant has significantly interfered with or unreasonably disturbed another occupant, the landlord is entitled to end the tenancy.

In the circumstances, I find no reason to cancel the notice to end tenancy, and the tenants' application is hereby dismissed without leave to reapply.

### Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

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 08, 2014

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Residential Tenancy Branch

