



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding Fontana Gardens  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OLC, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on December 4, 2022, seeking to dispute the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”). They also applied seeking the Landlord’s compliance with the legislation and/or the tenancy agreement, and reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 13, 2023. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

### Preliminary Matter – Tenant’s service of materials

Both parties attended the hearing. At the outset, the Tenant – via the Applicant JS – stated they delivered material to the Landlord. This was registered mail for the Notice of Dispute Resolution Proceeding, on December 7, 2022.

The Applicant JS also provided video for this hearing. As stated in the hearing, they provided this material to the Landlord via email. The Landlord stated they received a USB with video material on March 31, 2023, noting this was “past the deadline”, from the Applicant JS and not the Tenant. Their reply to the Applicant JS was to instruct them to consult with the Tenant about this matter.

I find the Landlord confirmed they received the Tenant’s video material in this matter. I am not excluding the material from consideration because of the timeline. I find there is no prejudice to the Landlord in considering this material in the hearing, primarily because they had sufficient

time to respond if necessary. I assign weight to this evidence in the decision below where relevant and appropriate.

#### Preliminary Matter – Landlord’s service of evidence

The Tenant confirmed they received evidence from the Landlord that was delivered on March 24 and March 31. That material from the Landlord also receives full consideration herein.

#### Preliminary Matter – named parties in this hearing

The Landlord explained that the Applicant JS is not a party to the tenancy agreement, not named as a Tenant. I concur with the Landlord’s point on this and herein refer to the occupant that lives with the Tenant – JS – as “the Applicant JS”.

#### Issues to be Decided

Is the Tenant entitled to a cancellation of the One Month Notice pursuant to s. 47 of the *Act*?

If the Tenant is unsuccessful in their Application, is the Landlord entitled to an Order of Possession pursuant to s. 55 of the *Act*?

Is the Landlord obligated to comply with the *Act* and/or the tenancy agreement?

Is the Tenant eligible for reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

#### Background and Evidence

The Tenant provided an image of a single page of the tenancy agreement; the Landlord provided the full document in their evidence. This shows a tenancy start date of August 1, 2009. The Applicant JS is named as an adult person that would occupy the rental unit. As stated by the Tenant in the hearing, the Applicant JS moved into the rental unit in November 2021. The Tenant provided the rent amount of \$1,442 on their Application.

The agreement contains a specific provision on conduct. This sets restrictions on noise or other disturbances at the rental unit property.

The One-Month Notice, as it appears in both parties' evidence, bears the Landlord's signature, and is dated November 25, 2022. This set the move-out date for December 31, 2022.

On page 2 of the document the Landlord indicated the following reasons for ending the tenancy via the One-Month Notice:

- ☐ 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 provided the following details on the form:

[The Applicant JS], occupant in [the rental unit] resides with [the Tenant]. [The Applicant JS] bangs on the ceiling (perhaps with a broom handle) at the slightest noise (or noise violation). Apparently, as long as there is a noise of any decibels, [the Applicant JS] will continue to bang. It is very disturbing to the tenant above, in suite [#]. The banging has occurred on a regular basis since June, 2022. A warning notice was issued to the tenants in [the rental unit] on September 13, 2022. The written warning stated that the banging needs to stop immediately. The banging has continued since the warning was issued. On numerous occasions, I sent friendly reminders and I spoke to the Tenant often to resolve this issue before issuing the one month notice to end tenancy.

Moreover, at 12:30am on Sunday, September 11, 2022, occupant [the Applicant JS] came and banged on the front door of suite [#] and threatened violence. The tenant in suite [#] was frightened by this act of intimidation.

The Landlord in the hearing presented that the resident in the rental unit above that of the Tenant – who is the Landlord's son -- moved into that unit above in March 2022. From approximately this time forward, the Landlord was in constant communication with the Tenant about the issue of noise from the unit above, and, in the Landlord's submission, the Tenant would respond to say that there were no issues. In their evidence, the Landlord presented text messages they had with the Tenant about noise coming from the unit above, to ensure the sound level was appropriate. This messaging and close communication between the Landlord and the Tenant continued through to June 2022.

By later September and into October 2022, the Landlord was inquiring on why the Applicant JS would be banging on their ceiling to notify the resident in the unit above about noise. On September 27 the Landlord requested to visit the Tenant to ascertain what the Tenant was able to hear inside their own unit from the unit above. This dialogue is shown in the Landlord's evidence that is text messages between themselves and the Tenant on this issue.

The Landlord provided a written timeline of events:

- June 21, 2022 – the Applicant JS complains the unit above is too loud and the Landlord investigates
- June 22, 2022 – the Applicant JS spoke to the unit above resident in person, “being too loud and walking like a “dead beat””
- July – September: the Landlord met with the Tenant to discuss the issue “many times” – the upper unit resident buys an extra carpet and “foam soled slides to wear” while walking
- September 11: the Applicant JS confronts the upper unit resident at 12:30am and tells them that they are being loud, and not to walk around. The upper unit resident calls the police, and the police communicated with that upper unit resident the following day. The upper unit resident wrote a letter, dated March 21, 2023, describing this in detail, and also including description of the Applicant JS’ comments regarding the upper unit resident’s personal character, banging 3 or more nights per week. The Landlord included three letters from acquaintances of the upper unit resident, who describe the same behaviour of the Applicant JS that they observed directly.
- September 13: the Landlord issued a caution notice in writing to the Tenant. In the Landlord’s evidence, this refers to the *Act* s. 47, and notes the specific incident of September 13 at 12:30am.
- September 27: the Landlord and Tenant listen to the upper unit resident walking around, and agree they cannot hear it
- September – December: the Applicant JS continues to bang against their ceiling to the upper unit, and their floor to the unit below, “on many nights each week” disturbing to those other units’ residents. The Landlord included an email and text message from the lower unit resident, who identified the noise they heard as banging from the unit above.
- November 25: the Landlord issued the One-Month Notice
- January 22 – 25, 2023: The Landlord, inside the unit above, observed first-hand the Applicant JS banging on their ceiling because of the Landlord’s walking around at that moment.
- January 31: the Landlord sent another warning letter to the Tenant. The Landlord notified the Tenant that “You continue to breach the material terms of the notice by significantly interfering with or unreasonably disturbing other occupants in the building.”
- February – present: the Applicant JS “continues to bang multiple evenings each week”.

The Landlord also provided a list of dates and specific incidents from September 25, 2022, through to March 1, 2023. For the most part, these note “banging occurs”. This is as told to the Landlord from the resident in the unit above the Tenant. This is described by the Landlord

as “many nights a week” for the upper unit resident’s movements that are merely walking around in their own unit.

In their evidence the Landlord included two short videos of the sound, observed with the upper unit resident’s feet standing on their unit’s floor. The sounds are 6 and 8 sharp bangs, audible in the video.

In the hearing, the Applicant JS presented that their job is healthcare; therefore, they are on varying shifts, 24/7, 7 days per week. They are not able to sleep during the daytime after their night shift which leaves them extremely tired and exhausted. In response, the Landlord noted the upper unit resident works from 1 – 9pm, making it later in the evening when they go to bed.

Their efforts at communicating with the Landlord on this issue led nowhere, with the Landlord responding that they were an occupant only, and not the Tenant in the rental unit. They recalled miscellaneous incidents with the upper unit resident, e.g., one time at 2:30am the Applicant JS had to knock on the door because of loud music emanating from the unit above.

The Applicant JS also resorted to calling the police one time. As stated in the hearing, the police understood the situation, and since they were named as an occupant the police took the viewpoint that JS should be able to address the issue with the Landlord.

Responding to the Landlord’s observations, the Applicant JS noted that, in one instance, the Landlord made a note of knocking on the ceiling, even though the Applicant JS was at work at the time of the occurrence. Additionally, the unit below was vacant when the Landlord noted they were on the receiving end of the Applicant JS’ disturbance.

The Applicant JS also pointed out that the Tenant, who has been a long-term resident, pays a smaller amount of rent than other units in the building, so the Landlord is trying to end this tenancy. They also cited the Landlord’s previous attempt to end the tenancy when the employment contract with the Tenant (who was a caretaker in the building) ended. The Landlord’s current attempt at ending the tenancy ties back to this previous end-of-tenancy issue that the Tenant challenged.

The Applicant JS provided a series of their emails to the Landlord on the issue of the upper unit resident’s noise into the early-morning hours. In these emails, the Applicant JS – directly to the Landlord – refers to the upper unit resident’s “loud music”. In July 2022 the Landlord responded to the Applicant JS to say they would speak to that upper unit resident. The Applicant JS also referred to “loud noises during the nights”, and from September onwards the Landlord referred to JS as “not a tenant on the lease agreement.”

In these emails, the Applicant JS also mentioned their 5am wake-up time for work, with their sleep disturbed because of that upper unit's music. Many of the messages show the time the Tenant sent messages, which is between 130am and 230am. They forwarded the Tenant's direct text messages to the Landlord on the same issue, with the Tenant noting some incidents of the upper unit resident playing music and stomping on the floor.

The Tenant was the individual who had direct text messaging in place with the Landlord. The Tenant's evidence here is a series of text messages, undated. They noted "we have to get up early for work and this is really bad". Also, they noted the upper unit resident playing music at 130am on one occasion, and "this situation is very annoying". The Landlord's response: "I'll keep reminding [the upper unit resident] to make sure [they don't] have loud music late at night."

In a separate entry, the Tenant noted the upper unit resident playing music at 2am and "the music was very loud" and "this situation is getting out of control". Again: "playing music Friday at 2am and Saturday at 4am very loud", and "this is not acceptable". Finally:

last night was very loud party . . . started about 8 pm till early hours of the night, this week day when people have to get up early for work, I wonder when you're going to stop this from happening this is too much

The Applicant JS/Tenant also provided 11 separate videos to illustrate the upper unit resident's habit with loud music. Four of the videos are at nighttime, with the Applicant JS noting the time, alternately as 215am or 130am, and music/chatter (over the volume of the music) are audible from outside of the rental unit, in the yard space surrounding the rental unit building. The music beat, and a siren-like drop forming part of the song are plainly audible in the video.

The Applicant's/Tenant's seven other videos are from daytime, outside the rental unit on the balcony. The upper unit resident's balcony is also open and the music is fully audible, even from some distance away on the street.

### Analysis

The *Act* s. 47(1) sets out each subsection that the Landlord indicated on the One-Month Notice as reasons for ending the tenancy.

In this matter, the onus is on the Landlord to prove they have cause to end the tenancy. The Landlord spoke to the reasons in their testimony and provided evidence that illustrates the problematic actions of the Tenant/Applicant.

I assign more weight in this matter, based on my reasoning below, to the evidence and testimony of the Tenant and the Applicant JS.

I find the most compelling evidence that enables me to make findings of fact is the video evidence provided by the Tenant. I am not satisfied of the Landlord's account of the Tenant and the Applicant JS responding to excessive noise – at all hours -- that I find originates from the upper unit's resident exclusively. I excuse the actions of the Tenant and the Applicant JS based on what they presented as evidence in this case. This is, quite plainly, a high frequency and high volume of noise that is negatively affecting – to an excessive degree – the Tenant's quiet enjoyment of their own rental unit, and the Landlord appears to be enabling the situation.

I find the Tenant's /Applicant's evidence shows they made complaints to the Landlord on a regular basis, and this centers on the upper unit resident's music, and excessive noise attributed to the high volume of music. The Tenant made their issue known to the Landlord via text messages, and the Applicant JS made the issue known – as much as they were allowed to, with the Landlord giving them a less-than-important status because they were an occupant in the rental unit – via emails. These were detailed, described the nature of the problem and, as presented in the evidence, continued on for a timespan of months in 2022. I find the Applicant JS having to knock on their ceiling in order to immediately deal with the bothersome situation entirely acceptable in the circumstances, with the Landlord effectively ignoring the issue, and not approaching the issue impartially.

The Landlord made it known in the hearing that the upper unit resident is their son. They expressed their own personal interest in the outcome of the issue. I find this unfortunately results in the Landlord not approaching the issue objectively, and prejudiced toward the Tenant and the Applicant JS as interfering with their family member's well-being. Without coming up with any other solution, or effectively dealing with the issue of noise and the Tenant's/Applicant's quiet enjoyment, they decided to end the tenancy.

I give less weight to the Landlord's evidence overall, as it originates from the upper unit resident (the Landlord's own family member) and does not consist of the Landlord's or another separate person's first-hand observations. The upper unit resident was naturally the source of information for the Landlord here, and they are adversarial to the Tenant/Applicant. The videos provided by the resident upstairs, I find, give a seconds-long glimpse of their issue with the unit below, with absolutely no context or other information. By contrast, the Tenant and

Applicant JS provided several minutes of video capturing clear audio of what I find are rather extreme disturbances involving music.

In sum, the Landlord is choosing the side of their family member, and they want to see a favourable outcome. This taints the Landlord's evidence overall, as well as the Landlord's ability to objectively manage the situation. I don't believe, as the Landlord stated on the One-Month Notice, that the Tenant/Applicant is overreacting to "a noise of any decibels". It is music, and it is chatter raised to a higher level because of the music, that is positively disturbing the Tenant/Applicant here.

I reviewed the Tenant/Applicant video evidence carefully. It is music of a nature that requires a louder volume, apparently, in order to derive enjoyment from it. I find the Applicant JS amply demonstrated that the music is at an inappropriate level at all hours of the night, and to an even more extreme level during the day. I grant that during the daytime there is no bylaw in effect, and the Applicant JS did not capture video/audio giving an idea of the level of sound within the unit; however, the level of music at any time of the day leads me to conclude on a balance of probabilities that upper unit resident is the true source of the difficulty in the building, with no concern for the Tenant's/Applicant's wellbeing.

I give no weight to the Landlord's account of a threat from the Applicant to the upper unit resident. I find that is baseless, as is the case with the sheer number of incidents of banging as alleged by the Landlord. Again, this was as told to the Landlord by the upper unit resident, and not independently observed. The Tenant described at least one incident as occurring when they were not even present, and I find that is credible. Due to the sheer volume of music, I would also question the upper unit resident's ability to accurately gauge any other ambient sounds or noises generated around them.

This is not a situation of the upper unit resident living timidly and being subject to the below neighbour's inappropriate or unwarranted claims of disturbance. I find, categorically, that the upper unit resident is creating the disturbance, and the Tenant and Applicant are at their wit's end trying to deal with the situation via the Landlord who is not impartial and invested in a favourable outcome for their own family member.

For the reasons above, I order the One-Month Notice that the Landlord served on November 30, 2022 is cancelled, and the tenancy shall continue.

The Tenant/Applicant also applied for a consideration of the Landlord's compliance with the *Act* and/or the tenancy agreement.



The *Act* s. 28 sets out the following:

A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(b) freedom from unreasonable disturbance;

In line with this, I order the Landlord to comply with this very important principle as set out in the *Act*. This means the Landlord must address the issue of the upper unit resident's unacceptable habits with noise that are negatively impacting the Tenant/Applicant in their rental unit. This includes, and is not limited to the music, the guests and their discussion over the higher-level music, and any other frequent noise or disturbances in the evening. I set the obligation on the Tenant/Applicant to communicate any infractions to the Landlord, via email that is time/date stamped for reference going forward. The Tenant/Applicant have every right to call the police when appropriate due to noise disturbances. The Tenant/Applicant must not make their discomfort known by banging on their ceiling, which in any event should not be necessary going forward.

In summary, I find the Tenant has resided in the rental unit for quite some time. I conclude the problem arose with the upper unit resident's move in to that rental unit, and uncannily the problem of the Tenant or the Applicant banging on the ceiling did not exist prior to this. If that were the case, there would be an objective measure of inappropriate behaviour from the Tenant/Applicant. But that is not the case here, and I find since the upper unit resident's move in to the rental unit the Tenant/Applicant's own quiet enjoyment in their rental unit – free from unreasonable disturbance – has been breached by their neighbour, and also by the Landlord.

Based on the Tenant's/Applicant's convincing and detailed testimony and evidence showing the true nature of the issue, I find they proved, on a balance of probabilities, that the upper unit resident is significantly interfering and unreasonably disturbing them. I find that the Landlord is breaching s. 28(b) of the *Act* by not sufficiently addressing the Tenant's/Applicant's complaints related to noise violations.

It is not known whether the upper unit resident has a tenancy agreement in place with Landlord; however, it is fair and equitable in these circumstances that they are expected to abide by the terms present in the Tenant's own tenancy agreement. I note in particular clause 17, which positively states that the tenant or their guests "must not disturb, harass, or annoy another occupant of the residential property". This specifies the hours of 10:00pm to 9:00am.

The *Act* s. 62(3) states:

The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that Act applies.

The Landlord must stop breaching s. 28(b) by protecting the Tenant/Applicant from unreasonable disturbance and enforcing noise rules in the building.

The *Act* s. 65(1)(f) authorizes me to order a reduction in a tenant's future rent by an amount that is the equivalent to a reduction in the value of a tenancy agreement due to a landlord's failure to comply with s. 28(b) of the *Act*:

Without limiting the general authority in section 62(3), if the director finds that a landlord or tenant has not complied with the Act, the regulations or the tenancy agreement, the director may make any of the following orders:

[ . . . ]

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement.

Based on the Tenant's/Applicant's detailed testimony, and their video evidence, I find that the value of the tenancy was reduced due to the Landlord's failure to guarantee the Tenant's right of quiet enjoyment by \$200 per month.

Pursuant to s. 65(1)(f), the Tenant shall pay reduced rent in the amount of \$1,242 per month starting on May 1, 2023. I note that I am not considering retroactive rent reduction that is also permitted as per s. 65(1)(c). A future deduction of rent from future rent for an amount owed by the Landlord is authorized by s. 72(2)(a) of the *Act*.

The Tenant is at liberty to submit a new application for further rent reduction, or retroactive rent reduction, if the Landlord does not sufficiently address the noise complaints after this decision.

The Landlord must apply for authorization to collect full rent when the Landlord can prove, on a balance of probabilities, that they are complying with the *Act*, especially s. 28(b).

As the Tenant/Applicant was successful in this Application, I find they are entitled to recover the \$100 filing fee paid for this Application. I authorize the Tenant to withhold the amount of \$100 from one future rent payment.

Conclusion

I order the One-Month Notice served by the Landlord on November 30, 2022 cancelled and the tenancy shall continue.

Pursuant to s. 65(f) of the *Act*, I authorize the Tenant to pay monthly rent in the amount of \$1,242, starting on May 1, 2023.

I authorize the Tenant to withhold \$100 from one future rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: April 17, 2023

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Residential Tenancy Branch