



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated April 21, 2010.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

### Background and Evidence

This tenancy started on May 1, 2001. On April 21, 2010, the Landlord served the Tenant in person with a One Month Notice to End Tenancy for Cause which alleged the following grounds:

- The Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- The 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

The agent for the Landlord (P.J.) claims that he served the Notice on the Tenant due to a number of complaints from other tenants made to the Strata and after he received a complaint that the Tenant had physically assaulted another occupant of the rental property on March 29, 2010. The Landlord admitted that the Tenant was not charged with an offense in connection with this incident but said he takes the position that the alleged assault was an illegal act.

The Parties agree that a couple of days prior to the alleged assault, the Tenant went to the unit directly above her suite to ask the occupant (who had just moved in) to keep the noise down. The Tenant claimed that noise from the suite above her was amplified by the hard wood floors. A couple of days later, the Tenant claimed that the noise level

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continued to be unreasonable so in response she began banging loudly on her ceiling. A short while later the occupant from the upper suite (L.S.) came to the Tenant's door.

L.S. gave evidence on behalf of the Landlord. In her written statement, she claimed that when the Tenant answered her door, she was naked and ran into the hallway with her fists clenched and started striking L.S. The Landlord's witness (L.S.) said she ran to the elevator, went back to her suite and called the police. L. S. claimed that the police convinced her not to press charges but that she remains afraid of the Tenant and has concerns for her safety. L. S. also claimed that for a couple of days following March 29, 2010, the Tenant continued to bang on her ceiling and scream obscenities at her from her deck.

Another agent for the Landlord (S.J.), who has been the property manager for the past 4 months gave evidence of behalf of the Landlord. S.J. initially claimed that he was present in another suite on the same floor as the Tenant's suite when the incident on March 29, 2010 occurred. S.J. claimed that he went into the hallway when he heard a commotion and saw the Tenant standing there naked, yelling and shaking her fist at L.S. S.J. then claimed that he had taken the elevator from the 4<sup>th</sup> floor to the 3<sup>rd</sup> floor but later changed this evidence and claimed that he was standing in the elevator lobby on the 3<sup>rd</sup> floor waiting for the elevator when the incident occurred. S.J. claimed that he only saw the "aftermath" of the assault when L.S. approached the elevator holding her arm and he heard her say that the Tenant had hit her.

The Tenant claimed that when L.S. came to her door on March 29, 2010, she opened the door a couple of inches to see who was there and L.S. started shaking her finger at the Tenant and they exchanged some words. On the first day of the hearing, the Tenant said she started to shut her door but heard L. S. swear at her. The Tenant said she got angry and opened her door at which time she claimed L.S. moved toward her. The Tenant claimed that she felt threatened so she pushed L. S. into the hallway and against a wall. In her evidence on the 2<sup>nd</sup> day of the hearing, the Tenant's evidence changed in that she said after she started to shut her door, she could hear L.S. swear so he opened her door a bit again and only opened the door fully when she saw L.S. move toward her. On both occasions, the Tenant said she yelled L.S. to leave but denied making a fist or hitting L.S. The Tenant argued that she reacted defensively but was justified in pushing L.S. away and only used reasonable force.

The Tenant's witness (M.M.) also gave evidence that he was present at the time of the incident on March 29, 2010. This witness claimed that as he was exiting the elevator on the 3<sup>rd</sup> floor, he could hear yelling but could not initially make out any words. M.M. claimed that he then heard the Tenant yell at L.S. to leave, saw her hand pointing and then saw L.S. approach the elevator. M.M. also claimed that he did not see L.S. holding her arm and that she did not appear to have been hit but admitted that she appeared

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very upset. M.M. said he believed that the Landlord's property manager (S.J.) was on the elevator with him when he arrived on the 3<sup>rd</sup> floor because the former manager, John, had told him that. M.M. admitted that he did not know what S.J. looked like but said he did not recall seeing anyone other than L.S. standing in the elevator lobby. M.M. also admitted that he is a friend of the Tenant's.

The Tenant said that since this event she exchanged pleasantries with L.S. in the elevator and has seen L.S. a number of other times on the rental property. The Tenant claimed that she also sent L.S. a letter a couple of months after the incident on March 29<sup>th</sup> in which she expressed her hope that they could have a better relationship. The Tenant said that as a result of these incidents, she does not believe L.S. is fearful of her and that relations are now "normalized."

The Landlord's agents argued that the Tenant has a history of disturbing other tenants of the rental property. They claimed that the previous manager of the rental property gave the Tenant a warning letter dated November 27, 2009 after he received a written complaint from other occupants of the rental property that the Tenant left a note on their door stating they had been "disrespectful and ignorant" by making a noise disturbance the previous evening (which they denied). Approximately a week later, the same occupants claimed that the Tenant yelled at their guests for smoking on their patio (2 floors below) and on a third occasion (10 days later) she left a note on their car saying they had parked too close to her car. These occupants claimed that they felt they were being harassed by the Tenant and were afraid of her.

The Tenant denied receiving a warning letter dated November 27, 2009 but admitted to leaving a note on the other occupants' door because she said they were swearing and being loud late at night. The Tenant's witness (M.M.) gave corroborating evidence that this was the case and claimed that both he and his mother who also reside in the rental property were disturbed by those same occupants. The Tenant also admitted to yelling at the occupants' guests because she thought there was a fire when she smelled burning paper which she said they were using to light cigarettes. The Tenant further admitted that she put a note on the other occupants' car because they did not leave enough room for a passenger to get into her car.

The Landlord's agents also claimed that they received a written complaint from an occupant across the hall from the rental unit about loud swearing and the noise from the Tenant's door slamming in late-December 2009. This occupant claimed that she had not approached the Tenant about the noise because she was afraid of her. The Tenant admitted that this noise may have been made by her former partner. The Landlord's agents further claimed that they received numerous verbal complaints from other occupants of the rental property about the Tenant.

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The Tenant argued that the previous manager of the rental property was unresponsive to noise complaints and therefore the occupants of the rental property had to take matters into their own hands. The Tenant claimed that the Strata minutes of the rental property indicate that there are many inter-tenant disputes regarding noise complaints.

The Tenant provided a witness statement from her former partner who claimed that for the 2 years he has known the Tenant he has found her to be “a kind, calm, collect[ed] and helpful person.” The Tenant also provided a witness statement from another occupant of the rental property who claimed that in the 5 years she has known the Tenant she has found her to be “a good, polite and respectful neighbour” who has not had any conflict with any of her neighbours. This witness also claimed that she ran into L.S. in the elevator the day she moved in and found her to be “inconsiderate” because she did not offer to move a number of cardboard boxes out of her way.

## Analysis

Although the Landlord’s agent (P.J.) argued that the alleged assault on March 29, 2010 of another occupant constituted an illegal act, I find that there is insufficient evidence to draw that conclusion. The Criminal Code of Canada, for example, specifies what elements of an offence must be proven “beyond a beyond a reasonable doubt” before an accused may be convicted of a criminal offence. As a result, evidence of a conviction under the Criminal Code or the Offence Act of B.C. will usually be required to make a finding that there has been an illegal act. Consequently, I find that the Landlord cannot rely on this ground of the One Month Notice.

Unless there is an incident that is so serious that a single occurrence warrants ending the tenancy, fairness requires that a Landlord give a Tenant a written warning that the Tenant’s behaviour could jeopardize their tenancy and that the Tenant is given a reasonable opportunity to correct their behaviour. The Landlord’s agent argued that the Tenant was given a warning letter on November 27, 2009 in response to a written complaint by other occupants of the rental property. The Tenant denied receiving this letter and the Landlord provided no other evidence to corroborate his claim that it was, in fact, given to the Tenant. Consequently, I find that there is insufficient evidence to conclude that the Tenant was given a warning that her methods of dealing with complaints about other occupants (rather than referring them to the Landlord) could jeopardize her tenancy.

As a result, I find that the sole issue to be determined in this matter is whether the Tenant did in fact assault another occupant of the rental property on March 29, 2010 and if so, whether that act was sufficiently serious that it warranted ending the tenancy without any further warning by the Landlord.

The Tenant denied that she hit the other tenant on March 29, 2010 but admitted that she pushed her into a wall in the hallway because she felt threatened. The evidence of the Landlord's witnesses was that the Tenant struck the other occupant in the arm. Although the Tenant claimed that she now has a good relationship with the other occupant (L.S.), in her written statement L.S. stated that the Tenant continued to harass her by banging on the ceiling of the rental unit and yelling obscenities after March 29, 2010 and as a result she now fears the Tenant and does not feel safe on the rental property.

The Tenant's advocate argued that where the evidence of the Tenant and L.S. differ, the evidence of the Tenant should be accepted as more reliable because L.S. did not give oral evidence in support of her written statement(s) at the hearing. However, on the first day of the hearing, the Tenant and her advocate were asked by the DRO if they wished to cross-examine L.S. on her written statement(s) and they indicated that they wished to do so. When L.S. attended the hearing by teleconference, however, the Tenant and her advocate changed their position and said they had no questions for L.S. who had been sworn and had adopted her statements as true. Consequently, the Tenant cannot now argue that the evidence of L.S. is unreliable solely because the Tenant elected not to test the reliability of that evidence.

Furthermore, where the evidence of the Tenant and L.S. differ as to whether the physical assault was in self-defence or not, I prefer the evidence of L.S. as I found the Tenant's evidence contradictory in a number of respects and therefore unreliable.

For example, on the first day of hearing the Tenant claimed that she had almost shut her door after L.S. started waving her finger at her but then opened the door fully to confront L.S. (even though she was fully naked) because she was angry that L.S. had sworn at her. It was only at this point, she said that she believed L.S. moved toward her in a threatening manner which L.S. denied. Based on this account, and given that the Tenant chose to confront L.S. rather than to close her door and de-escalate the situation, I find that the Tenant's reaction in pushing L.S. was more likely motivated by anger than by being concerned for her physical well-being.

On the second day of the hearing, the Tenant claimed that after she started to shut her door, she could hear L.S. swear at her so she opened her door slightly again and only opened the door fully *after* she saw L.S. move toward her. However, this account does not stand to reason. In other words if the Tenant was fearful of L.S., it does not make sense that her response would be to open her door even wider rather than to protect herself by closing her door (which according to her was ajar only a few inches). Consequently, I find the Tenant's first account more plausible and conclude that the

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Tenant opened her door to confront L.S. because she was angry at L.S. for swearing at her and pushed L.S. out of her doorway to get her to leave.

Although the Tenant claimed that she only used reasonable force against L.S. for the purpose of defending herself, I find that the weight of the evidence suggests instead that the force was not reasonable and that the Tenant's actions were motivated by anger. In her written submissions dated April 22, 2010, the Tenant claimed that L.S. physically assaulted her on March 29, 2010 however in her oral evidence at the hearing the Tenant admitted that she had not been physically assaulted by L.S. While it is not clear if the Tenant punched L.S. in the arm, it is clear based on the Tenant's own admission that she pushed L.S. with enough force to cause her to hit the wall in the hallway.

For all of these reasons, I find that the Tenant has significantly interfered with or unreasonably disturbed another occupant of the residential property. Although the Tenant argued that L.S. is not currently fearful of her and that their relationship is "normalized", this is irrelevant under s. 47(d)(i) of the Act which does not require a further finding that the Tenant is or will be a continuing threat to the safety of other occupants of the rental property.

The Tenant also argued that L.S. was at fault for provoking the incident by coming to her door and swearing at her. While it is likely that a verbal altercation likely precipitated this unfortunate set of events, the Landlord chose to end this Tenant's tenancy due to the nature of her actions. As the Landlord is ultimately responsible for ensuring the quiet enjoyment and safety of all occupants of the rental property, it is up to him to decide how he will deal with each party in disputes of this nature.

Consequently, I find that there are grounds to support the One Month Notice to End Tenancy for Cause dated April 21, 2010 and the Tenant's application to cancel it is dismissed without leave to reapply. The Landlord requested and I find that he is entitled pursuant to s. 55(1) of the Act to an Order of Possession to take effect at 1:00 p.m. on August 15, 2010.

## Conclusion

The Tenant's application is dismissed without leave to reapply. An Order of Possession to take effect on August 15, 2010 has been issued to the Landlord. The Order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia.



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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: July 27, 2010.

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Dispute Resolution Officer