



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

CNC

### **Introduction**

This hearing was convened in response to an application by the tenant to cancel a One Month Notice to End Tenancy for Cause (the Notice), dated January 19, 2012.

Both parties were given opportunity and to make relevant prior submission to the hearing. Both parties attended the hearing and both submitted late evidence. None the less, both parties claimed to have received and reviewed the evidence of the other and provided written response into evidence. The tenant advocate's prior request for an adjournment was discussed – as they claimed some of their submissions were provided in haste and they wanted opportunity to more fully respond to the landlord's evidence. Both parties were given a full opportunity by this hearing to respond to any evidence of the other, and to present all relevant evidence and sworn testimony in respect to their claims, ask questions, and fully participate in the conference call hearing. The parties were also offered an opportunity in the hearing to discuss and resolve their dispute to mutual satisfaction. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The landlord orally requested an Order of Possession.

It must be noted that in this type of application, the burden of proof rests with the landlord to provide evidence that the Notice was validly issued for the stated reasons and that at least one reason is sufficient to end the tenancy. The landlord does not have to prove all the reasons stated in the Notice to End.

### **Issue(s) to be Decided**

Is the Notice to End valid and issued for sufficient reasons to end the tenancy?  
Should the Notice to End dated January 19, 2012 be set aside?  
Is the landlord entitled to an Order of Possession?

### **Background and Evidence**

This tenancy began August 16, 2005. The residential property is a multi-unit complex within which the tenant occupies a unit.

The parties submitted a copy of the Notice to End. The landlord and tenant each advanced document evidence to this matter. The notice to end was issued for the following reasons;

*-Tenant or 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*

*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 tenant disputes the Notice to End. The landlord provided the cause behind the Notice. In response, the landlord testified the Notice to End was given following a history of occurrences of the past 2 years affecting the quiet enjoyment of the residential property. The landlord determined to give the tenant the Notice to End after a complaint of a party within the tenant's unit occurring January 13, 2012 which went into the night to 4:30 a.m. The landlord claims the tenant permitted a large number of people into their suite and that alcohol consumption was involved. The landlord received that the incident involved a significant amount of noise, loud arguments and fighting within the unit. The events of the night resulted in a complaint from the adjacent neighbours whom the landlord claims are elderly with health issues who were disturbed by the noise and commotion.

The landlord also states that they have knowledge of and have received complaints that the tenant's boyfriend (*the boyfriend*) has been seen on the residential property despite a "no contact" / probation order prohibiting contact with the applicant tenant – *directly or indirectly*, because of past violence. The landlord claims the tenant allows the boyfriend in and around her unit, despite the "no contact" order, and that other tenants are physically afraid when the boyfriend is on the residential property as he has been violent in the past while on the landlord's property, although only toward the applicant. The landlord and tenant each provided a copy of the "no contact" order. The document evidence provided by the landlord and the evidence of the landlord's witness is that the boyfriend has been seen by other residents on the residential property and seen entering the tenant's unit. The tenant's submissions on this point do not contradict the landlord's. They submitted they permitted the boyfriend on the residential property, but did so out of ignorance of the boyfriend's bail / probation conditions and / or because of (her) syndrome of abuse at the hands of the boyfriend.

The landlord provided witnesses in support to the landlord's reasons to end the tenancy:

Witness PG – adjacent neighbour

Under affirmation the witness stated the tenant has regular parties which are noisy, and that as a result they cannot sleep. The witness recounted the occurrence of the aforementioned party on January 13, 2012 involving the tenant, the boyfriend and friends, which went into the night to 5:00 a.m. and that police were called. The tenant testified that on this occasion they were grossly disturbed the entire night and that they were unable to sleep. The witness stated that there have been party incidents before of a similar nature, involving many people, apparent drinking of alcohol, and excessive noise. The witness stated they have not reported all incidents of similar disturbances by the applicant to the landlord.

Witness BG – adjacent neighbour and partner of PG

Under affirmation the witness mirrored the testimony of PG that the tenant has parties which are noisy; and, that as a result they have been disturbed and have lost sleep. The witness testified they are not in the best of health and that their primary concern is for the children of the applicant.

Witness GW – neighbour and relief manager for landlord

Under affirmation the witness stated they are a resident and assistant on-site manager and have personal knowledge of relationship disturbances at the tenant's unit involving the boyfriend. The witness has seen multiple police attendances at the tenant's unit in the recent past, and is privy to complaints and information from other residents that the applicant becomes intoxicated which results in a disturbance. The witness testified that on Christmas day 2011 the boyfriend made them feel nervous when they came to the witness's door with a "bag of bottles". February 05, 2012 at 10:15 p.m. they received a noise complaint from a resident adjacent to the applicant. They went to the applicant's unit and asked the occupants (tenant absent) to lower the music as it was bothersome to the elderly neighbours whom had been trying without success to put a stop to the commotion. The witness claims that later in the evening they were bothered by "dope" fumes from the adjacent parking lot caused by the occupants of the tenant's unit (tenant absent).

Witness SC – resident of residential complex

Under affirmation the witness stated they saw the tenant's boyfriend on December 24, 2011 within the residential complex – holding a reported beer can, standing in the applicant's carport and was then seen entering the applicant's unit.

The tenant submitted their account of events respecting the history of their tenancy and the landlord's allegations and in regards to the incident of January 13, 2012 which, in part, gave rise to the Notice to End. The tenant claims they were not notified of previous complaints the landlord alleged and they have only ever been responsible for a reasonable level of noise. They also provided an unsigned letter of support for the

tenant, a letter from the tenant's employer, and a letter from the school of the tenant's child. The tenant was brief on their own behalf – the advocate advancing most of the tenant's evidence. In their submissions the tenant's advocate highlighted the tenant is recovering from an abusive relationship with the boyfriend and is affected as a result, is a single parent to 2 children and requires supportive services. The advocate stated that, none the less, the abusive relationship ended and the tenant is now better informed and committed to keeping the boyfriend out.

### **Analysis**

The landlord did not advance evidence respecting the nature of the tenant's *illegal activity* which they stated as a reason in the Notice to End. I have not considered this portion of the landlord's reasons to end the tenancy.

There has been an abundance of evidence submitted. On preponderance of the relevant evidence in this matter I have reached a decision.

On the preponderance of the evidence I accept the testimony of the tenant's adjacent neighbours whom according to them, the applicant tenant, and the landlord, have had to endure periodic but serious disturbance of their lawful right to quiet enjoyment, until lately. In this respect I find the tenant has seriously jeopardized the lawful right of another occupant. In so doing, I find that this occurred as result of the tenant's choices and person(s) permitted on the property by the tenant.

I accept the landlord's testimony that the presence of the boyfriend on the residential property has caused angst and fear among the other occupants of the residential property, especially in light of the boyfriend's history and propensity for violence. I accept the tenant's evidence that they allowed the boyfriend on the property despite the boyfriend's status with the legal system. I find that the combination of this evidence strongly supports the probability of other occupants and the landlord of the residential property having been disturbed. I further find that the presence of the boyfriend has, on balance of probabilities, jeopardized the safety of another occupant or the landlord, and has jeopardized the lawful right of another occupant of their entitlement to quiet enjoyment as afforded by Section 28 of the Act.

As a result of all the foregoing, I prefer the evidence and testimony of the landlord over the evidence and testimony of the tenant. I find the landlord has met their burden of proof in showing they have *sufficient* cause to end this tenancy on the basis the tenant *significantly interfered with or unreasonably disturbed another occupant or the landlord, and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

As the result of all the foregoing, I **dismiss** the tenant's application to cancel the Notice to End Tenancy for cause, and uphold the landlord's Notice to End dated January 19, 2012. Effectively, I find that the landlord is entitled to an Order of Possession. On

reflection and consideration given to all the evidence submitted, the tenancy will end in accordance with my Order as per Section 55(3) of the Act.

### **Conclusion**

The tenant's application **is dismissed**. The landlord is given an Order of Possession.

Ending a tenancy is a serious matter. The landlord has discretion and may choose to resolve this matter versus ending the tenancy. However, if the landlord determines to end the tenancy, the Order of Possession must be served on the tenant.

I grant an Order of Possession to the landlord effective **1:00 p.m., Saturday, March 31, 2012**. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: February 17, 2012

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Residential Tenancy Branch