



# 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 filed on July 09, 2012 by the tenant to cancel a 1 Month Notice to End Tenancy for Cause (the Notice to End) dated June 30, 2012, and received by the tenant on July 01, 2012.

Both the tenant and the landlord appeared in the conference call and each participated in the hearing via submissions and affirmed / sworn testimony, as well as a witness for the landlord. The document evidence in this matter is limited to a signed statement by the upstairs tenant which the applicant acknowledged receiving. Despite lacking a copy of the Notice to End, the parties agreed the Notice to End was given with the reasons as:

- *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.*
- *put the landlord's property at significant risk.*
- *Tenant has engaged in illegal activity that has, or is likely to:*
  - *damage the landlord's property*
  - *adversely effect the quiet enjoyment , security, safety or physical well- being of another occupant, or the landlord.*
  - *jeopardize a lawful right or interest of another occupant or the landlord*
- *tenant has caused extraordinary damage to the unit or property*
- *tenant has not done required repairs of damage to the unit*

The landlord acknowledged that the underlined sections / reasons are not applicable in this matter.

For this type of application, the onus is on the landlord to prove the Notice to End was issued for sufficient reasons, and that at least one (1) reason must constitute sufficient cause for the Notice to be valid. The landlord is not required to prove all reasons

stipulated for ending the tenancy. The hearing proceeded on the merits of the testimony and evidence presented in the hearing.

At the outset of the hearing the parties were afforded an opportunity to resolve and settle their dispute and the landlord verbally requested that their Notice to End be upheld via an Order of Possession.

**Issue(s) to be decided**

Is there *sufficient* cause to end the tenancy?

Is the landlord entitled to an Order of Possession?

**Background and evidence**

The tenant resides in a multi-unit residential complex and shares their accommodation with a room-mate.

The landlord testified they issued the Notice to End on June 30, 2012 by giving it to the tenant's room-mate on that date. The applicant testified they received it the next day on July 01, 2012. The landlord testified they issued the applicant the Notice to End in response to repeated complaints by the *upstairs tenant* that the applicant tenant in this matter has repeatedly disrupted the quiet enjoyment of the upstairs tenant by yelling and screaming at the upstairs tenant and banging on the tenant's ceiling for no known reason. The landlord testified that he has been engaged by the upstairs tenant (complainant) several times per month following these types of incidents. The landlord claims that the applicant tenant suffers from a head injury and purports that this may have resulted in the tenant's inappropriate conduct and that the other occupants of the residential complex have endured the burden of the tenant's conduct. The tenant disputes the landlord's claims, however, acknowledges they once went to the upstairs tenant's unit door and strongly asserted themselves to the neighbour following an episode of noise emanating from the neighbour's suite. The tenant claims he has yelled to the upstairs tenant on occasions they are making too much noise, seemingly resulting from numerous occupants in the suite, creating the noise.

The landlord introduced the following witness:

Witness #1 – upstairs tenant

The witness was affirmed. They acknowledged that the document submitted into evidence was their document and signed by them. The witness provided the following testimony. They testified the tenant has repeatedly pounded on the ceiling and screamed obscenities, yelling for them to “shut up”, for no apparent reason and that this has occurred 5 to 6 times per month, sometimes very late at night, including one incident in which their entire family was sleeping and the tenant woke them up pounding on the ceiling and yelling for them to “shut up”. Over the past month the tenant has engaged in this conduct 3 times. The witness gave one example occurring in mid-July at 9:00 p.m. in which the tenant was in their living room “quietly” playing a video game with their son – the tenant pounded on the ceiling and loudly yelled for the noise to abate. The witness testified that they know the tenant’s voice and can readily distinguish their voice from the room-mate, as they have heard them many times before. The upstairs tenant testified they have been left feeling threatened and intimidated by the tenant’s outbursts and what they describe as aggressive conduct, although without knowing the extent of the tenant’s reasons for their outbursts.

**Analysis**

I accept the testimony of the tenant that they received the Notice to End on July 01, 2012, rendering the effective date of the Notice to End no earlier than August 31, 2012. I have reflected carefully on all relevant matters presented. On the preponderance of the evidence and testimony provided and on the balance of probabilities I accept the landlord’s testimony and evidence and find the landlord has met the burden of proof in showing they have *sufficient* cause to end this tenancy on the basis the tenant has:

*Significantly interfered with or unreasonably disturbed another occupant or the landlord and significantly jeopardized the health or safety or lawful right of another occupant or the landlord*

Therefore, I uphold the landlord's Notice to End as valid; and effectively, the tenant's application to cancel the landlord's Notice to End is **dismissed** without leave to reapply. The landlord is hereby entitled to an Order of Possession.

Section 55 of the Act, in part, states as follows:

**Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

**Conclusion**

The tenant's application is **dismissed**. **I Order** the tenancy will end on the effective date of the Notice to End. I grant an **Order of Possession** to the landlord effective **Friday, August 31, 2012**. This Order must be served on the tenant. Should the tenant then 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 final and binding on both parties.

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 30, 2012

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Residential Tenancy Branch