



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

**Dispute Codes:** CNC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Cause dated August 28, 2009.

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

### Issue(s) to be Decided

Should the One-Month Notice to End Tenancy for Cause be cancelled? The burden of proof is on the landlord/respondent to justify the Notice to end Tenancy.

### Background and Evidence

The tenancy began in February 2002 and the current rent is \$700.00 per month.

The landlord testified that the tenant's conduct has generated complaints over a long period of time and recent events prompted the landlord to end the tenancy by issuing a One Month Notice to End Tenancy for Cause. Submitted into evidence was a copy of a notice dated July 17, 2012 indicating the tenancy was being ended because the tenant :

- allowed an unreasonable number of occupants in the unit
- significantly interfered with or unreasonably disturbed other occupants or landlord or;
- seriously jeopardized the health, safety or lawful right of other occupants or landlord.
- put the landlord's property at significant risk

The landlord provided a written submission chronicling complaints about the tenant dating from July 2010 to July 2012. Copies of written complaints and incident reports were provided in evidence. Additional evidence submitted by the landlord consisted of photographs of blood contamination, correspondence and warning letters to the tenant.

The tenant's evidence consisted of written testimony including a chronology listing past issues with the landlord, written witness statements, a copy of a notice apparently posted by the landlord on July 16, 2012 announcing a new building manager, a copy of a Notice to enter from the landlord dated August 14, 2012, copies of newsletters,

reports from City of Victoria Advisory Housing Committee dated August 11, 2005, a copy of a dispute resolution decision dated February 25, 2010, copies of correspondence, including a letter from the tenant's doctor, letters of reference with positive commentary about the tenant and photographs.

The landlord testified that the tenant's conduct and the conduct of his alleged associates, have placed the landlord's property at risk, interfered with and disturbed others and jeopardized the health, safety or lawful rights of others in the complex.

### **Noise**

The landlord made reference to the evidence which verified that numerous written complaints have been received from more than one source in the complex regarding noise generated by the tenant and his guests. The landlord pointed out that there was a number of noise complaints reported in 2010, a written complaint from the parents of a person living above the tenant in 2011, and numerous reports of excessive noise received in May, June and July 2012. Copies of these reports were in evidence. The tenant felt that the complaints and reports of excessive noise had no merit.

The tenant stated that the landlord and others are engaged in an unfair campaign to discriminate against him aimed at terminating his tenancy. In support of this, the tenant provided a copy of a previous hearing decision issued in February 2010 in which the landlord was criticized by the dispute resolution officer for his manner of interacting with the tenant. The tenant testified that he was awarded a substantial monetary claim and feels that the landlord now has a retaliatory attitude against him. The tenant also pointed out that one of the main complainers about excessive noise is a friend of the building manager. This fact was confirmed by the respondent landlord and the witness.

The tenant also pointed out that much of the evidence submitted by the landlord relates to previous years and is not applicable to the current Notice. The tenant stated that many other people in the complex make a lot more noise than he does and yet the landlord takes no action to protect his peaceful enjoyment.

A witness appeared for the landlord and gave testimony about the ongoing noise disruption emanating from the tenant's suite. This resident had kept a journal and was able to provide dates and descriptions of the interference such as banging, playing drums, loud music, boisterous parties, yelling and a hostile attitude displayed by the tenant to any complaints, including verbal threats.

The tenant acknowledged that a person residing in the same suite as the witness had apparently come to his door one evening and complained directly to his guests about noise and he then felt it was necessary to go to the complaining resident's suite to have

a conversation with them. The tenant testified that he was merely seeking answers and no threats had been made against these other residents. According to the tenant, he was met with a hostile response. The tenant pointed out that no charges or fines had been imposed by police in regard to the noise.

The written testimony from one of the tenant's witnesses did make a reference to the tenant having gatherings, and described one incident, during which they had been playing acoustical instruments in the early evening, before 11:00 p.m. This witness stated that while this was going on, only the tenant's guests were involved, as the tenant was asleep. According to the witness, their jam session had apparently generated two angry visits from the tenant below and resulted in a police officer attending. However, the witness wrote that as far as they know, the problem between the tenant and the neighbour was apparently satisfactorily resolved.

The tenant admitted that he does operate a recording studio in his suite, and produces his own music. However, according to the tenant, he wears headphones and there is no excessive noise created by this practice. The tenant pointed out that he disassembled his drum set because he is not physically capable of playing the drums any longer.

### **Conduct**

The landlord testified that there were numerous reports of disruptive conduct by the tenant and persons perceived to be associated with the tenant. According to the landlord, there have been recent incidents and fights, some involving police presence.

The landlord stated that there was an incident on June 18, 2012 where the tenant was allegedly ticketed by police for consuming alcohol in front of the building, after which the tenant was issued a warning letter. The tenant denied that he was ever ticketed for drunkenness and stated that he was nowhere in the proximity at that time in question.

The landlord stated that there was another disruptive incident on July 12, 2012 that involved a person known to be a friend and frequent visitor of the tenant's, seen trying to pry open the door in an intoxicated state. The landlord testified that, on that date, another friend of the tenant tried to smash the glass window in the lobby.

The tenant denied having any involvement in these incidents and stated that, while the landlord may have concluded that the individuals were his friends, their presence in the complex had no relation to him and he had not invited them onto the premises.

The landlord stated that an incident occurred on July 13, 2012, allegedly involving some friends brought into the building by the tenant, some of whom were drunk and seen and heard fighting in the hallway. Numerous residents were disturbed. With respect to the

alleged fighting incident, the landlord had submitted several large-size photos showing blood contamination left throughout portions of the building stemming from this violent incident which, according to the landlord, involved the tenant entering another suite to engage in a fight with the occupant. Written and verbal witness testimony that the landlord also submitted indicated that the tenant had been a participant in the incident and was seen with the individuals.

The tenant stated that the supposed incident put forth by the landlord as evidence of his conduct, had no relation to him personally. The tenant stated he was unfairly blamed, when he was not even involved in the melee. The tenant submitted written testimony from a witness who identified herself as a person directly involved in the altercation that had resulted in the disturbance of building residents that night. This written account of the events stated that the tenant was in his suite but was approached by the participants who asked the tenant to help them attend to their injuries. According to this report, the tenant had only aided people after being asked to do so. The written testimony indicated that the tenant was not at fault in any way. However, the witness did not attend the hearing and the landlord did not have the opportunity to properly cross examine the writers to ensue the validity of this evidence.

The landlord stated that the upsetting incidents described above were the basis for their position that the tenant had put the landlord's property at significant risk and seriously jeopardized the health, safety or lawful right of another occupant or the landlord.

The tenant testified that he has unfairly been held accountable for the disruptive conduct of visitors who have associations with other residents in the building and who were not connected directly with him. The tenant testified that he was absent or asleep when some of the alleged incidents occurred.

With each allegation of excess noise or other disturbance presented by the landlord, the tenant denied that the conduct or incident ever occurred, or claimed no knowledge of what had transpired. In response to other allegations, the tenant gave an alternate version of what occurred that contradicted the landlord's reports and testimony.

#### Analysis – Notice to End Tenancy

With respect to the landlord's allegation that the tenant had allowed an unreasonable number of occupants in the unit, I find that the landlord has not successfully proven that this was the case.

In regard to the landlord's allegation that the tenant had seriously jeopardized the health, safety or lawful right of another occupant or the landlord or put the landlord's property at significant risk, I find that a tenant is always responsible for the conduct of

his guests. However, this landlord was not able to sufficiently prove that the particular individuals involved in fighting, forced entry, drinking in public and attempts to damage the premises, were connected to the tenant and that they were there at the tenant's invitation. I find that the outside visitors may have been affiliated with the tenant, but could possibly have been friends of other residents as well.

In regard to the landlord's final reason for ending the tenancy, I find I must determine whether or not the Tenant violated the Act by engaging in conduct that significantly interfered with or unreasonably disturbed others, of a magnitude sufficient to warrant ending the tenancy under section 47 of the Act.

I find that, based on the evidence and testimony provided by both parties, it is a fact that other residents in the building were disturbed by what they believed was excessive noise coming from the tenant's suite. However, before this would be considered sufficient to terminate a tenancy, the noise must be proven to have reached the threshold of inflicting significant interference or unreasonable disturbance on other renters. The Residential Tenancy Guideline gives examples of what may constitute "significant Interference" including serious examples of:

- unreasonable and ongoing noise;
- persecution and intimidation;
- engaging in destructive or violent behaviour

In regard to the term, "*unreasonably disturbed*", Black's Law Dictionary defines "unreasonable" as:

*"Irrational; foolish; unwise; absurd; preposterous; senseless;... immoderate; exorbitant; ...capricious; arbitrary; confiscatory."*

In this instance I find that there is proof that complaints about noise from this suite had been received by the landlord over a period of time. I also find that these complaints came from more than one source. I find that the mere presence of police, does not speak to the degree of noise, being that police are obligated to respond to calls and their attendance is not contingent upon the merit of the complaint. So the issue of police does not necessarily support the allegation of excessive noise. However, it is also not necessary to find that there was a violation of any municipal noise bylaws before the level of noise is found to constitute significant interference or unreasonable disturbance for neighbouring occupants, who have a statutory right to peaceful enjoyment of their own suites.

I find it evident that one or more of the tenant's neighbours have genuinely been bothered by noise on numerous occasions and the tenant has been asked directly to reduce the noise by occupants, building management and the police. However, during the hearing I find that this tenant still attempted to deny that he had continued to cause unreasonable disturbance after being made aware of complaints. The tenant acknowledged that he does operate a music recording studio but insisted that this does not interfere with others as he uses headphones. However, I find that the tenant's written witness testimony made it clear that the tenant hosts group music jam sessions. I find that one of the music sessions did bother another resident to the extent that the other resident came to the tenant's door and spoke to the guests, after which the tenant decided to confront the complainants himself by going to their suite.

I find that the tenant's subsequent visit to a resident in another suite to demand an explanation for their actions in complaining, was not appropriate and could reasonably have been perceived as aggressive or threatening.

I also find that the person most recently complaining about noise, who is a friend of the building manager, was not the only resident who had asked for intervention by the landlord. In fact, there were several other similar complaints to the landlord dating back to 2010. These documented complaints were in evidence and cannot be ignored.

Although I do not discount the tenant's testimony that the relationship between the tenant and the landlord was fraught with serious problems, past and present, some of which were established as being caused by the landlord, I do not accept the tenant's testimony that every noise complaint made by different residents at various times were part of a campaign engineered by the landlord to evict the tenant from his home.

Given the above, I find that the tenant did unreasonably interfere with and disturb other residents in the building. Accordingly I find the tenant's Application requesting that the Notice be cancelled is not supported under the Act and must therefore be dismissed.

During the hearing the Landlord made a request for an order of possession. Under the provisions of section 55(1)(a), upon the request of a Landlord, I must issue an order of possession when I have upheld a Notice to End Tenancy. Accordingly, I so order. The Tenant must be served with the order of possession. 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.

## **Conclusion**

Based on the evidence and the testimony discussed above, I hereby dismiss the tenant's application without leave.

I hereby grant the landlord an Order of Possession effective Sunday, September 30, 2012.

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: August 23, 2012.

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Residential Tenancy Branch