



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Pacifica Housing Advisory Association  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: CNC, MNDC, RR / OPC

### Introduction

This hearing was scheduled in response to the tenant's application for cancellation of a 1 month notice to end tenancy for cause / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and permission to reduce rent for repairs, services or facilities agreed upon but not provided. Both parties attended and gave affirmed testimony.

During the hearing the landlord's agent confirmed that the landlord seeks an order of possession in the event the tenant's application for cancellation of the notice does not succeed.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on November 1, 2011. Monthly rent is due and payable in advance on the first day of each month. Currently, the tenant's portion of monthly rent is \$554.00. A security deposit of \$392.50 was collected near the start of tenancy.

The landlord issued a 1 month notice to end tenancy for cause dated January 31, 2013. The notice was served in-person on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is February 28, 2013. Reasons shown on the notice in support of its issuance are as follows:

Tenant or a person permitted on the property by the tenant has:

seriously jeopardized the health or safety or lawful right of another occupant or the landlord

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

During the hearing the landlord's agent confirmed that the grounds identified in the notice both pertain to the tenant's installation of surveillance cameras on her unit at the beginning of January 2013. The tenant informed the landlord of this matter by way of e-mail dated January 23, 2013. Subsequently, a Property Notice was issued by date of January 28, 2013, instructing the tenant that the cameras must be removed "within 48 hours." By e-mail dated January 29, 2013, the tenant informed the landlord's agent of her objection to being instructed to remove the cameras. Thereafter, however, the tenant removed the cameras sometime in early February following the landlord's issuance of the notice to end tenancy. The tenant filed an application to dispute the notice on February 8, 2013.

Further to seeking cancellation of the notice to end tenancy, the tenant has applied for compensation of approximately \$1,099.89 for the alleged breach of the right to quiet enjoyment. The tenant has set out the following calculation in relation to her claim for the period from August 1, 2012 to January 31, 2013:

6 months' rent of \$3,300.00 (6 x \$550.00) x 33.33% = \$1,099.89.

The tenant's claim for compensation arises out of her complaints about certain neighbours whose conduct and behaviour she alleges have breached her right to quiet enjoyment. Related documentary evidence includes, but is not necessarily limited to, e-mail exchanges between the tenant and the landlord, and various correspondence which includes specific correspondence from the landlord to the renters who were the subject of the tenant's complaints.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 47 of the Act speaks to **Landlord's notice: cause**, and provides in part as follows:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d) the tenant or a person permitted on the residential property by the tenant has

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

In direct relation to issuance of the notice to end tenancy, the landlord drew attention to a provision in the tenancy agreement, as follows:

**30. Alterations, Decoration and Other Use of the Rental Unit and Property**

Unless prior WRITTEN CONSENT is given by the Landlord, the Residents will NOT:

(b) attach or erect to the Rental unit or Residential Property, any radio or television equipment or any other object;

Based on the documentary evidence and testimony, I find that the landlord has failed to meet the burden of proving sufficient cause to end the tenancy on the basis of the grounds identified on the notice to end tenancy. In summary, I find that the tenant undertook to remove the cameras in a relatively timely fashion following a formal written instruction to do so. I make this finding despite the fact that the cameras were only removed after the landlord's issuance of the 1 month notice. Accordingly, the notice to end tenancy is hereby set aside, with the result that the tenancy presently continues in full force and effect.

Section 28 of the Act addresses the **Protection of tenant's right to quiet enjoyment**:

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

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Further, Residential Tenancy Policy Guideline # 6 speaks to "Right to Quiet Enjoyment," and provides variously and in part as follows:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

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A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment, however it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behavior. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.

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An Arbitrator can award damages for a nuisance that affects the use and enjoyment of the premises, or for the intentional infliction of mental suffering.

Based on the documentary evidence and testimony, I find that in response to the tenant's several complaints about neighbours, the landlord followed-up with certain neighbours by way of formal correspondence. In short, I find on a balance of probabilities that the tenant has established entitlement to nominal compensation in the limited amount of \$50.00. In order not to interfere with the process by which the tenant's rent is paid, I decline to make this award by way of authorizing a one-time reduction in rent. In the alternative, I instruct the landlord to make a payment to the tenant in the amount of \$50.00, and I hereby issue a monetary order in favour of the tenant to that effect.

### Conclusion

The 1 month notice to end tenancy is hereby set aside. The tenancy continues uninterrupted.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$50.00**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court 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: March 06, 2013

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Residential Tenancy Branch

