



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Union Gospel (Heatley) Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This is an application filed by the Tenant to cancel a notice to end tenancy issued for cause.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served.

### Issue(s) to be Decided

Is the Tenant entitled to an order to cancel a notice to end tenancy?

### Background and Evidence

Both parties have confirmed that the Landlord served the Tenant with a 1 month notice to end tenancy issued for unpaid rent dated May 28, 2013 by placing the notice in the Tenant's mailbox. The Tenant confirmed that he received the 1 month notice to end tenancy dated May 28, 2013 in his mail box, but does not recall when, but states that it was probably within 4 days of the date on the notice. The Landlord's notice states an effective date of June 30, 2013. The reason for cause is stated as, "Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another Occupant or the Landlord."

The Landlord has provided copies of letters of complaint dated February 6, 2013 from unit #325 that on February 5, 2013 at 3:40am, the complainant, R.S. was woken up from "loud pounding at my door" by the Tenant. It states that the Tenant stated, "in a rather severe fashion to "turn off your heat, asshole!" The Landlord has also provided a letter of complaint from A.W. dated February 26, 2013, "This note is in concern about noise level coming from Apt.#% % % %." The complainant states that he heard loud music as he was leaving his unit #& & & coming from #% % % %. The letter states that, "this isn't

the 1<sup>st</sup> time loud music was coming from Apt. #%%%, this has been the 3<sup>rd</sup> time.” Another complaint on a letter dated March 1, 2013 from R.S. that “music was on incredibly loud. The base was literally shaking my floor and the wall we share.” The Landlord stated that he took no action when these complaints were received and sent a letter dated March 7, 2013 to the Tenant. The letter warned the Tenant of “slamming doors, loud music, even some yelling” which contravene the signed Tenancy Agreement quoting “Schedule A”, “Behaviour..to keep the volume of stereos and television at a reasonable level.” The Landlord has also provided subsequent letters of complaint from other Tenants dated March 19, 2013, April 29, 2013, May 4, 2013 and May 28, 2013 all from the same neighbor. The Landlord has also provided copy of an email from a staff member dated May 4, 2013 that investigated a noise complaint on the same date at 5:30am of excessive noise at the Tenant’s rental unit and determined that there was excessive noise. This email was sent to the Landlord’s Agent who did not follow up with the complaint. The Landlord has also provided another email from another Tenant dated May 12, 2013 of “excessive loudness and of the constant bass sounds that emanate from the Apt. #&&&.” The Landlord stated that he has no investigated any of the complaints made by other Tenants.

During the hearing, the Tenant’s Advocate challenged that the 1 month notice to end tenancy was improperly served as it does not conform to the allowed forms of service and seeks to have the notice cancelled.

The Tenant’s Advocate also states that the Landlord has failed to provide sufficient cause for the notice and challenges that the Landlord is attempting to “collect reasons” to end the tenancy and the witness statements reliability are in question. The Advocate also states that the Landlord has failed to provide proper warning to the Tenant after receiving a complaint to rectify the issue immediately. The Landlord disputes these claims by the Tenant’s Advocate stating that he is only responding to the complaints of the other Tenants. The Tenant’s Advocate has provided a copy of a previous dispute resolution between the two parties and two letters from the Tenant’s physician.

## Analysis

Section 88 of the Residential Tenancy Act states,

**88** All documents, other than those referred to in section 89 *[special rules for certain documents]*, that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

Although this is not a normal form of service, I find that the Landlord has properly serve the Tenant with the 1 month notice to end tenancy issued for cause dated May 28, 2013 in accordance with Section 88 of the Act. The Tenant has confirmed the notice to end tenancy was received in his mailbox in satisfaction of Section 88 (c) of the Act. The Tenant's Advocate has failed to provide any details of how this would prejudice the Tenant. Both parties have confirmed in their direct testimony that the notice was served in this fashion in the Tenant's mail box. The Tenant has confirmed that service was received within at least 4 days of the date of the notice as stated by the Landlord, but is unsure as to the exact date. The Tenant was able to file for dispute resolution on June 4, 2013 and submit documentary evidence. Both parties have confirmed receipt of the notice and all of the evidence filed. I find that as neither party is prejudiced by this. I find that the 1 month notice dated May 28, 2013 to be valid and sufficiently properly served.

I find that the Tenant's evidence to be neither helpful nor relevant. The Tenant nor his Advocate provided any explanation or details about the Tenant's two physicians letters or how they are relevant to the dispute.

Although the Tenant disputes the claims made by the Landlord, I find on a balance of probabilities that the Landlord has established the reasons for cause to end the tenancy. The Landlord has provided letters of complaint from 3 different Tenants, a letter from a staff member regarding confirmation of the noise complaints and the Landlords Agent's own direct testimony that he witnessed the excessive noise coming from the Tenant's unit. The Tenant has failed to provide sufficient evidence to satisfy me that the Landlord's witness statements are false. The Tenant was aware of the warning letter dated March 7, 2013. Although this letter lacked sufficient details on a specific incident, it was more than adequate to provide notice to the Tenant on the issue of excessive noise for which the 1 month notice to end tenancy is based. The Landlord has provided sufficient evidence to satisfy me that following the warning letter dated March 7, 2013 that there were subsequent complaints of excessive noise made by other Tenants that were investigated by the Landlord. The Tenant's Application to cancel the notice to end tenancy dated May 28, 2013 is dismissed.

The Landlord having stated that he wished for the Tenancy to end is granted an order of possession. This order must be served upon the Tenant. Should the Tenant fail to comply the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

### Conclusion

The Tenant's Application is dismissed.  
The Landlord is granted an order of possession.

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 03, 2013

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Residential Tenancy Branch