



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CMHA KOOTENAYS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, CNC, FF

### Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession; and
2. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To allow more time to make an application to cancel a notice to end tenancy ;  
and
2. To cancel a notice to end tenancy.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Preliminary Issue

In this case, the tenant has applied to allow more time to make an application to cancel a notice to end tenancy. However, I find the tenant did make their application within the

10 days as required by the Act. Therefore, I find the application requesting more time is not necessary.

### Issue(s) to be Decided

Should the notice to end tenancy issued on May 28, 2013, be cancelled?  
Is the landlord entitled to an order of possession?

### Background and Evidence

The tenancy began on December, 1, 2008. Rent in the amount of \$484.00 and subject to change upon annual review. A security deposit of \$300.00 was paid by the tenant.

Attached to the tenancy agreement is an addendum for crime free housing, which the landlord and tenant agreed was a material term of the tenancy agreement and agreed that a single violation shall be good cause for a notice to end the tenancy. Any drug related criminal activity is one of several items listed on the addendum.

The parties agree that a one month notice to end tenancy for cause was served on the tenant indicating that the tenant is required to vacate the rental unit on June 30, 2013. However, the landlord has indicated if the notice is upheld that they are agreeable to extend the effective vacancy date to August 31, 2013, to assist the tenant in finding new rental accommodations.

The reason stated in the notice to end tenancy was that the tenant has:

- 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.

The landlord's agent testified that the tenant has continued to ignore the warning letters that have been provided to her regarding drug activity, and noise complaints.

Filed in evidence are:

- 6 warning letter from June 9, 2009 to 2012; and
- 9 warning letters from February 13, 2013 to June 24, 2013
  - 6 of these letters are regarding unreasonable and significant disturbances.

The landlord's agent testified on February 26, 2013, they received complaints regarding ongoing noise disturbance coming from the tenants unit. The reports indicated that the tenant's son continues to play loud music on the weekends and late into the evening an early morning hours. The landlord stated the tenant was provided a written warning and the tenant apologized. Filed in evidence is a written letter of complaint.

The landlord's agent testified that the weekend of March 1, 2013, that they had received several reports that the tenant had a loud party which disturbed several other occupants.

The landlord's agent testified on March 4, 2013, when she arrived at the building complex at 9:00 am the music coming from the tenant unit was extremely loud and she knocked several times on the door and there was no response. The landlord stated when she came to the unit 20 minutes later the music was off and there was no response when she knocked on the door.

The landlord's agent testified on March 5, 2013, the tenant was issued another warning.

The landlord's agent stated that since then they have continued to have complaints regarding the tenant's son or his guest music. The landlord's agent stated that due to the tenant not correcting the situation that decided to end the tenancy and a notice was issued on May 28, 2013.

The landlord's agent testified since the notice to tenancy was issued the situation has escalated as there was another party on May 31, 2013, which they received several complaints.

The landlord's agent stated on June 21, 2013, the police attended due to the tenant and another occupant causing a disturbance and interfering with the landlord right to do business. The landlord stated On June 21, 2013, at 9:30am that she met with an outreach worker who helps clients who have had brain injuries. The landlord stated the outreach worker on her client had arranged to view with an apartment that was going to be available in the near future. The landlord stated as they went by the tenants unit, both the tenant and occupant engaged in bad behavior as they were yelling at her that she was not allowed to enter the other occupants unit. The landlord stated she had provided proper 24 hours notice to the occupant and the tenant had no right to interfere. The landlord stated the outreach worker and the potential client left the complex without viewing the unit. Filed in evidence is a letter from the outreach worker. Filed in evidence is a copy of a 24 notice to enter.

The landlord's agent testified that the witness also has placed threatening material on facebook to get rid of the property maintenance worker and that material was distributed amongst some of the other tenants. The landlord's agent stated the maintenance work now is uncomfortable working in this environment. Filed in evidence is a copy of the facebook dialog.

The landlord's witness (FL) testified that she does maintenance for the building and on occasion will serve documents for the landlord, but all the major issues are made by the landlord.

The landlord's witness (FL) testified that they continue to have issues with the tenants son playing music loud, the witness stated part of the problem with the music is the language is very foul and is offensive and can be heard by the other occupants who reside in the complex as well as the children who play outside.

The landlord's witness (FL) testified because of the threats that were posted on facebook and distributed to other tenants make her feel very uncomfortable when doing her job.

The landlord's witness (RL) testified that she witnessed the tenant's behavior on June 21, 2013, as the tenant and another occupant were yelling and waving their arms at the property manager who was showing a unit to a potential client and an outreach worker. The witness stated due to the behavior of both the tenant and an occupant that they called the police.

The tenant testified that she believes the landlord is only evicting her because she was at a hearing in April 2013, regarding another occupant.

The tenant acknowledged receiving the warning letter in February 2013.

The tenant testified that on the March 1, 2013, there was a birthday party for one of her son's friends and they did not realize the music was so loud.

The tenant testified that she does not believe the landlord attended her rental unit on March 4, 2013, and denies the music would be loud at 9:00am.

The tenant testified she was not home on May 31, 2013, but when she spoke to her son he denied there was a party or loud music.

The tenant testified on June 21, 2013, it was the other occupant that was doing the yelling and that she only went inside her unit to contact the occupant who rents the unit the landlord was attempting to show and she was told by her friend that the landlord had not provided her sufficient notice. The tenant stated she had a right to interject as the occupant was her friend.

The tenant acknowledged that she placed material on facebook which appears to be a threat, however, believed the message was taken out of context.

The tenant acknowledged that her tenancy agreement has a no drug activity clause and admits her 15 year old son and his friends smoke marihuana in the rental unit, however, they generally take it away.

In support of the tenant the tenant has filed several character references from other occupants whom reside in the complex. The tenant referred to one specific letter she alleged was from the occupant (RH) who put in the original complaints. However, I note this letter typed, not dated and not signed.

The tenant's witness (CB) testified that she believe this eviction is in retaliation of a hearing that was held in April 2013, when the tenant was acting as an advocate for her. The witness stated she had known the tenant for 7 years and that the tenant was not violent and has never threatened anyone. The witness stated the tenants son is quiet boy and very popular and she has never had any issues with loud music.

When the witness was questioned by the landlord, the evidence of the witness was that she has been displaced due to mould and has not be living in the rental unit for an extended period of time, however, sometimes attend for up to eight hours or will stay overnight.

### Analysis

Based on the totality of the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord

In this case, the reason the notice was issued was the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. I find the tenant was provided sufficient warnings by the landlord to correct this behavior on February 26, 2013, when she received a written warning.

The evidence of the landlord's agent was since receiving the written warning in February 2013, there continues to be unreasonable noise disturbances as there was a party on the weekend of March 1, 2013, which the tenant acknowledged and apologized.

The evidence of the landlord's agent was on March 4, 2013, when she arrived at the complex at 9:00 am the music coming from the tenants unit was so loud and that when she knocked on the door of the tenant's rental unit there was no responded. However, 20 minutes later when she returned the music was off and there was again no response to her knocking.

The evidence of the landlord's witness (FL) was the music has continued on a regular basis and the music has been quiet offensive due to the language used.

While I accept that the tenant has filed character references to support her position that she is a good neighbour. However, none of the letter submitted refer to any of the above incidents.

Further, the tenants witness indicated that this eviction is in retaliation. However, I note the written warnings letters were dated prior to the hearing that was held in April 2013, on another matter. I find that this allegation is merely speculation.

As a result, I am satisfied that the landlord has proved, on a balance of probabilities, that the tenant has unreasonably disturbed on at least three occasions other occupants of the residential property and the landlord. Therefore, I find the notice issued on May 28, 2013, is a valid notice and must be upheld.

Having found this, it is unnecessary for me to consider the balance of the landlord's allegations of drug activity. Even though the tenant has admitted her son and his friend use marijuana at the rental unit, which is a breach of a material term of the tenancy agreement.

Also, I am satisfied since the tenant received the notice to end tenancy that the situation has escalated.

The evidence of the landlord's agent was on May 31, 2013, there was another party at the tenant's rental unit. The evidence of the tenant was she was not a home and has no personal knowledge, except that she was told by her son there was no party or loud music. The son did not attend the hearing to provide any testimony.

The evidence of both parties also support that the police attended the tenant's rental unit, when there was a significant interference and disturbance by the tenant, when the landlord attempted to show an outreach worker and a potential client a rental unit that was soon to be available. While the tenant's argued that it was not her, and it was the other tenant who engaged in that behavior, that is not support by her testimony as she indicated that she had the right to step up as her friend told her the landlord had not provided the proper 24 hours notice to enter.

Further, the testimony of the landlord's agent, the landlord's witness and the letter from the outreach work do not support the tenant's version that she was merely a spectator.

The letter from the outreach worker, indicated that the landlord was "at risk both from the women and the smell of the apartment. She made the right choice by turning us back and leaving the apartment."

[Reproduced as written]

Also, the evidence of both parties was the tenant posted on facebook threats regarding the landlord's maintenance worker (FL). The evidence of the tenant was she was angry for receiving the notice and the context of the message was taken wrong.

Therefore, based on the totality of the evidence, I dismiss the tenant's application to cancel the one month notice to end tenancy issued on May 28, 2013. As a result, the landlord is entitled to an order of possession on the effective vacancy date, however, the landlord has agreed to extend that date to August 31, 2013. Therefore, the tenancy will end on August 31, 2013, in accordance with the Act.

I find that the landlord is entitled to an order of possession effective August 31, 2013, **at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court.

The landlord has been successful with their application and the landlord is entitled to recover the cost of filing the application. Therefore, I grant the landlord a monetary order in the amount of \$50.00 and the landlord is entitled to deduct that amount from the security deposit if full satisfaction of the claim.

### Conclusion

The tenant's application to cancel a one month notice to end tenancy for cause is dismissed.

The landlord is granted an order of possession. I grant the landlord a monetary order for the cost of filing their application and the landlord is entitled to deduct that amount from the security deposit.

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, 2013

---

Residential Tenancy Branch