



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Courtenay Kiwanis Village Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC O

### Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the tenant to cancel a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) and “other” although no details of “other” were provided in the tenant’s application.

The tenant, the tenant’s legal advocate, and an agent for the landlord (the “agent”) attended the hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The tenant confirmed that she received the evidence from the landlord and that she had the opportunity to review the evidence prior to the hearing. The tenant stated that she did not submit evidence in support of her application.

### Preliminary and Procedural Matter

During the hearing, the tenant withdrew her application for “other”. As a result, that portion of the tenant’s application will not be considered.

### Issue to be Decided

- Should the 1 Month Notice cancelled?

### Background and Evidence

Neither party submitted a copy of a written tenancy agreement, although the agent stated that a written tenancy agreement exists. The parties agreed that a month to month tenancy began on or about October 1, 2011. Although neither party could confirm

the exact amount of monthly rent, the parties agreed that monthly rent is approximately \$420.00 per month and is due on the first day of each month. The agent confirmed that there was no security deposit or pet damage deposit in relation to this tenancy.

A 1 Month Notice dated June 26, 2013 was received by the tenant on June 26, 2013 in person at the rental unit. The effective vacancy date listed on the 1 Month Notice is July 31, 2013. The tenant disputed the 1 Month Notice on July 5, 2013. The landlord has alleged three causes on the 1 Month Notice which was submitted in evidence. The first cause is that the tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The second cause is that the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord. The third cause is breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Regarding the first cause, the agent testified that the tenant does her laundry that is not consistent with the posted laundry times. The agent did not submit a copy of the "posted laundry times", nor did the agent submit a copy of the tenancy agreement. Furthermore, the agent did not provide any evidence that the tenancy agreement included a condition specific to laundry times that the tenant agreed to in writing at the start of the tenancy. The agent testified that the tenant was entering the rental units of other tenants without permission. The agent referred to three letters during the hearing which were submitted in evidence.

The first letter by tenant KJ did not include any statements that directly allege that the tenant was entering her rental unit without permission. The agent stated that tenant KJ was not available to testify during the hearing. The second letter by tenant GL was dated October 10, 2012. Tenant GL was not available to testify during the hearing and the letter did not provide specific dates of alleged entry into rental units by the tenant. The second letter reads in part "...Stalking people – peeking inside doors both front and back...Invites herself over and/or walks right into people's homes...". The tenant denied the behaviour alleged in the second letter. The third letter by tenant DB, reads in part that the tenant "...Invites herself over and/or walks right into people's homes...", which is the same wording as the second letter. The agent denied writing the letters but did confirm that he typed the letters as the original letters from the other tenants were written in "crayon" and could not be faxed in as evidence as a result. Tenant DB was not available to testify during the hearing. The tenant denies the behaviour alleged in the third letter.

Regarding the second cause, the agent testified that the second cause was included in the 1 Month Notice in error and that he did not have any evidence to support the second cause listed on the 1 Month Notice. The agent stated that he was not alleging “illegal activity” by the tenant.

Regarding the third and final cause, the agent testified that the material term being breached by the tenant related to laundry. The landlord did not provide the tenancy agreement to substantiate that there was a laundry condition in the written tenancy agreement. There was no evidence submitted during the hearing that the written tenancy agreement contained a condition specific to laundry.

### Analysis

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

The 1 Month Notice dated June 26, 2013 has an effective vacancy date of July 31, 2013. The tenant disputed the 1 Month Notice on July 5, 2013 which is within the ten day timeline provided for under the *Act* to dispute a 1 Month Notice.

Once a 1 Month Notice is disputed, the onus of proof is on the landlord to prove that the 1 Month Notice is valid. Regarding the first cause, the agent testified that the tenant does her laundry that is not consistent with the posted laundry times. The agent did not submit a copy of the “posted laundry times”, nor did the agent submit a copy of the tenancy agreement. Furthermore, the agent did not provide any evidence that the tenancy agreement included a condition specific to laundry times that the tenant agreed to in writing at the start of the tenancy.

Also related to the first cause, the agent testified that the tenant was entering the rental units of other tenants without permission. The agent referred to three letters during the hearing. None of the authors of those letters, tenants KJ, GL and DB were available to provide testimony during the hearing. The first letter by KJ, did not support that the tenant had entered her unit without permission. The second letter by GL did not provide any specific dates and the third letter, provided a specific date but did not allege that the tenant entered her rental unit on that specific date. The tenant denied the allegations in the second and third letters related to the allegations that the tenant had entered the rental units of GL and DB without permission, although no specific dates were provided regarding the alleged entries. Based on the above, **I find** the agent failed to meet the burden of proof to prove the first cause on the 1 Month Notice due to insufficient evidence.

Regarding the second cause, the agent testified that the second cause was included in error and that he did not have any evidence to support the second cause listed on the 1 Month Notice as he was not alleging "illegal activity". Therefore, **I find** the agent failed to meet the burden of proof to prove the second cause on the 1 Month Notice due to insufficient evidence.

Regarding the third and final cause, the agent testified that the material term being breached related to the laundry. The landlord failed to submit a copy of the written tenancy agreement in evidence. There was no evidence submitted during the hearing that the written tenancy agreement contained a condition specific to laundry and without a written tenancy agreement I am unable to determine if a condition included in the written tenancy agreement is a material term. Therefore, based on the above **I find** the agent failed to meet the burden of proof to prove the third cause listed on the 1 Month Notice due to insufficient evidence.

Based on the above, **I find** that the landlord has not met the burden of proof as the landlord provided insufficient evidence to prove any of the three grounds listed on the 1 Month Notice. Therefore, **I cancel** the 1 Month Notice as the 1 Month Notice is not valid.

**I order** the tenancy to continue until ended in accordance with the *Act*.

#### Conclusion

The 1 Month Notice issued by the landlord dated June 26, 2013 is cancelled.

I order the tenancy to continue until ended in accordance with the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 09, 2013

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Residential Tenancy Branch

