



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0955787 BC Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, LRE, OPT, RP, RR

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a Notice to End Tenancy – Section 47;
2. An Order suspending or setting conditions on the Landlord’s right to enter the rental unit – Section 70;
3. An Order of Possession of the unit – Section 54;
4. An Order for repairs to the unit – Section 32; and
5. An Order allowing the Tenant to reduce rent for services/facilities agreed upon but not provided – Section 65.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath.

### Preliminary Matters

At the onset of the Hearing, the Tenant’s application was reviewed and it was determined that the primary claim being made is in relation to the end of the tenancy. As the remaining claims are not related to this claim, I dismiss these claims with leave to reapply.

During the Hearing, the Landlord referred to evidence that was not present and states that this evidence was sent to the Residential Tenancy Branch and the Tenant on November 18, 2013. The Landlord states that this evidence is in relation to a recent

event and after the issuance of the notice to end tenancy. The Tenant states that no such evidence was received. Given that evidence must be received at least 5 days in advance of the Hearing, and further considering that this event occurred after the notice to end tenancy was served and therefore not evidence of events that occurred prior to the service of the notice to end tenancy, I declined to consider this evidence.

#### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

#### Background and Evidence

The tenancy started on March 8, 2013. On October 9, 2013 the Landlord served the Tenant with a one month notice to end tenancy (the "Notice"). The Notice sets out the following reasons:

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

- significantly interfered with or unreasonably disturbed another occupant of the landlord;
- put the landlord's property at significant risk.

The Landlord states that the Tenant's guests or acquaintances have unreasonably disturbed or significantly interfered with the tenants who live in units beside and above the Tenant's unit.

The Landlord provided written letters from a tenant outlining instances in which persons were seen in the building repeatedly knocking at the Tenant's door or waiting for the Tenant. This tenant also relates an incident in relation to a person attempting to gain access to the building and causing this tenant to be afraid when the tenant refused to allow entry. The Landlord states that another person attempted to gain access to the building through a commercial space and another having made entry into the lobby of the building and that these persons were attempting to gain entry to the Tenant's unit.

The Tenant states that he was the person referred to by this tenant in relation to the person refused access to the building and that he had asked this tenant, his neighbour, to allow him access into the unit but was refused. The Tenant denies doing or saying anything else to this tenant. The Tenant states that he did not allow any of the persons described into the building nor is he aware of any of these persons.

The Landlord states that due to these complaints it was determined that a code could also be used to gain entry to the building despite the tenants having fobs for their entry. The Landlord states that access to the building can no longer be gained by the use of a code.

A second tenant also provided a letter dated November 5, 2013 that indicates loud talking, arguments, and dog barking is heard by this tenant and that this continues "even after 11 p.m." The Tenant denies any noise from his unit and states that his dog only barks when the neighbour's dog barks

The Landlord states that a guest of the Tenant assaulted another tenant causing that tenant to move. The Tenant states that this incident occurred on public property, the sidewalk by the building, that this person was not his guest and was not invited into the unit or building by the Tenant. The Landlord states that they believe the Tenant is involved in a drug trade. The Tenant vehemently denies any involvement in a drug trade. The Tenant states that he believes the Landlord is trying to evict him for requesting repairs to the unit. The Tenant states that he is very stressed from this which is impeding his recovery from a back injury.

The Landlord states that the Tenants door was damaged by "not hugely significant" scratches caused by a person or persons trying to gain access to the Tenant's unit. No photo of this damage was provided.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. No evidence was provided to substantiate that the Tenant is involved in illegal activities, and it is noted that the Notice does not include this reason. Further there is no evidence indicating that the Tenant invited or allowed any of the persons complained about into the building. Given this deficiency, I find that the Landlord has failed to establish that any of the incidents involved a person permitted on the property by the Tenant. Nor has the Landlord substantiated that any person admitted to the building by the Tenant caused significant damage to the unit door or otherwise. Although the Landlord has provided evidence from one tenant about noise from the Tenant's unit, I do not find this evidence substantial enough to warrant an eviction. As a result, I find that the Notice is not valid and that the Tenant is entitled to a cancellation of the Notice. The tenancy therefore continues.

### Conclusion

The Notice is cancelled and of no effect.

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: November 21, 2013

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Residential Tenancy Branch

