



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Mission and District Senior Citizens Housing Association and Vancouver  
Eviction Services  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"), seeking cancellation of a 1 Month Notice to End Tenancy for Cause (the "Notice") issued by the landlord.

The tenant, her legal advocate, and the landlord's agents appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issue regarding the service of the documentary evidence or the tenant's application.

Thereafter all parties, including the landlord's witnesses, gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled?

### Background and Evidence

This tenancy began July 1, 2013, monthly rent is currently \$391, and a security deposit of \$196 was paid by the tenant.

The rental unit is located in an apartment building, with 8 floors and 61 rental suites. The tenant lives on the 5<sup>th</sup> floor.

Pursuant to the Rules of Procedure, the landlord's agents (hereafter "landlord") proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause. The Notice was dated September 26, 2013, was delivered on September 28, 2013, by posting it on the tenant's door, and listed an effective end of tenancy on October 26, 2013.

The causes listed on the Notice alleged that the tenant has allowed an unreasonable number of occupants in the rental unit, that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord, adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, put the landlord's property at significant risk, and 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 landlord's relevant documentary evidence included a copy of the Notice, a handwritten notice illegible due to faintness, a handwritten note apparently from an occupant of the residential property dated October 21, 2013, and handwritten notations about three alleged events at the residential property, with the dates of July 16 (2) and July 25.

As to the first listed cause, that the tenant has allowed an unreasonable number of occupants in the rental unit, the matter dealt with one occupant who no longer resides in the rental unit and was no longer an issue. As the landlord was unable to explain why they considered one additional occupant, even if true, was an unreasonable number, I no longer considered this alleged cause for consideration.

As to the last listed cause on the Notice, the landlord never explained the nature or type of the alleged illegal activity, defined in Residential Tenancy Branch Policy Guideline 32 as "a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code." Further the landlord should be prepared to prove the activity was illegal by providing to the arbitrator and to the other party a legible copy of the relevant statute or bylaw.

As the landlord never dealt with the alleged illegal activity during the hearing or failed to provide what the relevant law the tenant allegedly violated, I no longer considered this alleged cause for consideration.

The hearing continued on the remaining three causes.

In support of issuing the Notice to the tenant, the landlord's agent, PS, stated that although she does not work on site, she and the resident caretaker began receiving phone calls from other residents living in the residential property, said complaints involving an increase amount of "traffic" into the building, more particularly, there were reports of anywhere from 1-15 people visiting the tenant. PS said she telephoned the tenant on July 16.

In response to my question, PS confirmed that no written warnings have been issued to the tenant.

The resident caretaker, JC, testified he saw a large number of "street" people visiting the tenant, and that these people posed a risk to the other residents.

JC confirmed that he does go to bed at approximately 9:00 at night and is not aware of any activities afterwards.

The landlord's witness, SM, who lives directly below the tenant, recalled one specific incident on August 22, at approximately 7-7:30, when one of the tenant's friends entered her apartment without knocking.

SM also said that she hears constant noises and scraping at all hours of the day or night. The floors in the rental units are uncarpeted, according to SM.

The landlord's witness, MN, who lives two floors above the tenant, testified that he constantly has people knocking on his door, wanting to buy drugs.

The landlord's witness, JH, who lives in the basement level, testified that one of her primary concerns was that since the end of July, there have been constant noises coming from the tenant's rental unit, as she discovered when she went to the 5<sup>th</sup> floor to determine the source of the noises heard in her rental unit.

JH said that she saw 5 street people visit the tenant on August 7, and explained that the residential property is across the street from a community services building.

I note that the landlord was prepared to have at least 3 other residents testify; however, the statements of the witnesses were cumulative and were not sufficiently dissimilar to warrant further testimony. The landlord did not object.

In response, the tenant contended she is a “Good Samaritan” and likes to help out people. Additionally her visitors help her with chores and that she does not allow drinking or drugs in the premises. The tenant stated that no one has caused damage and that all visitors are out by 11:00.

The tenant further submitted that she has now prevented the visitors from coming to her rental unit.

### Analysis

The landlord bears the burden of proving they have grounds to end this tenancy and must provide sufficient evidence to prove each or any of the alleged causes listed. The landlord has issued a Notice to End Tenancy listing alleged causes, three of which are interrelated and two of which were not considered due to the reasons given above.

After considering all of the oral evidence submitted at this hearing and documentary evidence submitted prior to this hearing, I find that the landlord has provided insufficient evidence to substantiate the causes listed. In reaching this conclusion I could not rely on the one witness statement of another tenant submitted as documentary evidence for this hearing, written well after the Notice was issued by the landlord. I also could not rely on the statements of the other tenants made at the hearing, as there was no testimony of any alleged incidents beyond July or August. This left me to conclude that the concerns of these tenants, whether true or not, did not lead to the issuance of the Notice on September 26. Although the landlord spoke of a constable’s involvement, I was given no further independent proof that the allegations or concerns of the other tenants were true or that the constable has attended the residential property due to the activities of the tenant or her guests.

Additionally, I was not persuaded that the allegations contained in the witness’ testimony were true as there was a lack of written warnings to the tenant about any of the alleged infractions, with notice that a continuation of such alleged activity could lead to the end of the tenancy.

Without sufficient, documented notice to the tenant, I cannot find that the tenant was given the opportunity to correct any alleged infractions which would lead to the end of her tenancy.

I therefore find that the landlord has submitted insufficient evidence to prove the causes listed on the Notice.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause dated September 26, 2013, for an effective move out date of October 26, 2013, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

### Conclusion

I grant the tenant's application seeking cancellation of the landlord's 1 Month Notice and the Notice is hereby cancelled with the effect that the tenancy will continue until ended in accordance with the *Act*.

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* and is being mailed to both the applicant and the respondent.

Dated: November 12, 2013

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Residential Tenancy Branch

