



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OPC, FF

### Introduction

This hearing dealt with applications by both the tenant and the landlord. The tenant applied to cancel a notice to end tenancy. The landlord applied for an order of possession and to recover their RTB filing fee.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

### Issue(s) to be Decided

Should the notice to end tenancy be cancelled?

If not, is the landlord entitled to an order of possession?

### Background and Evidence

The tenancy agreement signed by the parties on April 8, 2014 indicates the tenancy started on May 1, 2014. The tenant is obligated to pay rent of \$1,300.00 monthly in advance on the first day of the month. The tenant also paid a security deposit of \$650.00.

The landlord gave evidence that she served the tenant with a Notice to End Tenancy for Cause (the "Notice") on June 23, 2014 by giving it to an individual who was staying with the tenant. The Notice specifies an effective date of "07 July 31". The landlord says it was meant to read July 23, 2014. The Notice indicates the following reason for the Notice:

- 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 gave evidence that since the tenant moved in, she has received complaints from other tenants about noise and about the smell of cigarette and marijuana smoke. The landlord said she has received seven letters from six different tenants regarding these issues. The other tenants complain about noise from the tenant's rental unit at all times of the day and night, and say they are woken up and this interferes with their work.

The landlord provided copies of five letters from four other tenants. She said she received an additional two letters from other tenants after the deadline for submitting evidence. In evidence were:

1. Two letters from the tenants directly below the tenant in this application: The tenants below complain about noise late at night on four occasions in June 2014, and about the tenant in this application apparently moving furniture around during the night on four consecutive nights. They say they asked the tenant to cease the noise at 2 a.m. one night, and the tenant complied for one hour then started again. In the second letter, the tenants below complain about loud parties continuing until the next morning on two occasions after their first complaint letter. The tenants below also complain about the sound of a man apparently pounding on the floor early the previous morning.
2. A tenant on the floor above complains about the constant smell of marijuana and cigarette smoke that seeps into his unit.
3. Another tenant complains about "relentless partying, at all hours of the evening, during the weekdays." The other tenant says there was recent yelling and swearing from the rental unit at 5 a.m. and that transient people are being allowed into the building and congregating outside at all hours.
4. Another tenant states they have heard "obnoxiously loud music played day after day from their apartment while hearing drunk people yelling from the patio .." The other tenant says they made a noise complaint to the police when someone on the rental unit balcony was intoxicated, yelling into her cell phone, and swearing.

Although the last two letters were not signed, the landlord affirms she knows the identities of the tenants who wrote them. The landlord says other tenants were reluctant to put their names on their letters after the tenant in this application read another tenant's complaint letter loudly from his balcony.

The landlord says she received two more letters from other tenants. She says one tenant says there has been swearing and yelling at 5 a.m., partying on weekday nights, and they have been awakened by loud noise. The other tenant says they have been

awakened by loud music and yelling from 2:30 to 5:30 a.m. and this has become a regular occurrence.

The landlord says she gave the tenant verbal warnings by phone or text message on more than six occasions. She also gave the tenant a warning letter on June 10, 2014. Other tenants complained to her verbally, and she asked them to put their concerns in writing for this hearing. Her evidence is that the police have been called to the building on three occasions because of noise from the rental unit. On the last occasion, she said the tenants below called her because they thought someone in the rental unit might be having a seizure.

The tenant gave evidence that the Notice was not given to him personally, but to a friend who was staying with him. His evidence is that he had a medical emergency the night the downstairs tenants heard thumping on his floor. He says the police attended and he was taken to hospital. When he returned home a few hours later, his friend gave him the Notice.

The tenant says this was a one-time incident. Regarding smoking, the tenant says the landlord smokes herself and he believes everyone in the building smokes. The tenant agrees the landlord called him a couple of times regarding noise. However, he says that the noise was not coming from his rental unit but from a different rental unit. He agrees he received a warning letter, but says he told the landlord that it was another rental unit creating the noise.

The landlord gave evidence that she had seen the man she gave the Notice to around the building for two or three months. The man had previously told her he was staying with the tenant and asked her for a laundry card.

### Analysis

I accept the landlord's evidence that she gave the Notice to a man she had seen around the building for two or three months and who had told her he was staying with the tenant. I find that the Notice was properly served, pursuant to Section 88(e) which allows a document to be served "by leaving a copy at the person's residence with an adult who apparently resides with the person."

When a landlord issues a notice to end tenancy for cause and the notice is disputed by the tenant, the onus is on the landlord to prove one or more of the specified causes on a balance of probabilities. If the landlord proves the specified cause, the Notice will not

be cancelled. However, if the landlord does not prove the specified cause, then I must cancel the Notice.

I find the landlord has proven, on a balance of probabilities, that the tenant has significantly interfered with and unreasonably disturbed other occupants of the rental building. I accept the landlord's verbal and documentary evidence that various other occupants of the building have been disturbed by repeated, late night noise and smoke from the rental unit, and this has continued despite the landlord's warnings to the tenant.

Since the landlord has proven she has cause to end the tenancy, the Notice is upheld. The landlord is therefore entitled to an order of possession. I grant the landlord an order of possession which must be served on the tenant. Should the tenant fail to comply with the order, it may be filed for enforcement in the Supreme Court.

The landlord is also entitled to recover their RTB filing fee of \$50.00. **I order that the landlord retain \$50.00 from the tenant's security deposit** for this purpose.

#### Conclusion

The tenant's application is dismissed. I grant the landlord an order of possession. The landlord may retain \$50.00 from the tenant's 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: September 04, 2014

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Residential Tenancy Branch

