



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, MNDC, OLC, O, OPR, OPC, MNR, FF

### Introduction

This decision concerns the tenants' application to cancel a one month Notice to End Tenancy for cause dated November 5, 2014., the landlord's request for an order of possession pursuant to that Notice and the related claims for recovery of the filing fee.

The balance of the claims made by each party in their original applications was dealt with in the Interim Decision dated January 7, 2015.

The last hearing of this matter took place on January 21, 2015. This decision has been delayed to permit the landlord to re-file certain documentation the tenants had received but that had gone missing at the Residential Tenancy Branch and for the tenants to provide a particular email referred to at the hearing. That documentation has now been received. That documentation included an additional letter from the landlord, composed after the last hearing. In so far as it contains additional evidence or allegations, it has not been considered.

The Notice in question alleges that the tenants have:

- 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,
- Put the landlord's property at significant risk.

and that the tenants have engaged in illegal activity that has, or is likely to:

- Damage the landlord's property,
- Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord,
- Jeopardize a lawful right or interest of another occupant or the landlord.

and that the tenants have caused extraordinary damage to the rental unit.

The proof on any of those allegations justifies a tenant's eviction under s. 47 of the *Residential Tenancy Act* (the "Act").

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that there are good grounds for the Notice?

### Background and Evidence

The rental unit is a two bedroom basement suite in the landlord's house. The landlord and her five year old daughter occupy the upstairs of the home.

The tenants, husband and wife, reside in the lower portion with their teenage son.

The tenancy started in February 2012. The current monthly rent is \$2350.00, due on the 15<sup>th</sup> of each month. The landlord holds an \$1100.00 security deposit and an \$1100.00 pet damage deposit.

There are two Residential Tenancy decisions noted on the first page of this decision. They relate to two previous applications by the tenants to cancel previous Notices to End Tenancy (among other relief claimed). Both Notices were also based on the conduct of the tenants.

The first application sought to cancel a one month Notice dated June 13, 2014. That Notice was cancelled by the decision of Arbitrator K. dated August 13, 2014.

The second application sought to cancel a one month Notice dated August 15, 2014, two days after the decision of Arbitrator K.. That Notice was cancelled by the decision of Arbitrator H. dated November 19, 2014.

At this hearing the landlord submitted that the tenants:

1. Were constantly fighting each other,
2. Were blackmailing money from her,
3. Were bullying her,

4. Had damaged her property,
5. Were taking her mail,
6. Were causing her health problems, and
7. Were jeopardizing her daughter's safety.

The landlord wished to adduce evidence of a number of incidents beginning at the very start of the tenancy, particularly related to the claim that the tenants are constantly disturbing her by fighting between each other and that Mr. G. is bullying her.

Conduct prior to the last eviction Notice, given August 15, 2014 should properly have been the subject of that Notice. At hearing the landlord was limited to raising grounds occurring after the August 15<sup>th</sup> Notice and up to the November 5<sup>th</sup> date of the Notice in question here.

The landlord's evidence is:

- On August 17 there was loud music from the suite below. A local government bylaw enforcement officer attended. His report shows that any music had ceased by the time of his arrival.
- On August 20 a representative of the Ministry of Child and Family Development called relaying a complaint that she had left her daughter home alone. The landlord thinks one of the tenants made the call out of malice. On the same day the landlord again called bylaw enforcement about loud music.
- On August 25 the landlord saw the tenant Ms. G. kick pebbles out of an ornamental garden located in the front pathway.
- On August 28 the tenants' son shone a flashlight up into her bedroom window.
- On August 29 the landlord discovered that someone she thinks was Mr. G. had kicked over her garbage can and blue box in the laneway.
- On September 3 Mr. G. and his son could be heard quarrelling.
- On September 4 Mr. G. and his son fought again, shouting at the top of their voices.
- On September 11 she tripped over a hose she thinks Mr. G. had left lying around specifically to trip her.

- On September 18 the tenants took out too many garbage bags for pickup and arranged them so that the garbage man would skip her garbage.
- On September 22 she heard a big fight downstairs at dinner time, with yelling and door slamming. Her daughter was afraid. She called the police and they stopped the fighting.
- On September 26 in the morning she heard Ms. G. and her son shouting at each other. Later that day, she thinks Mr. G. banged on her floor, his ceiling, in an effort to frighten them.
- On September 29 she returned home to find more fountain pebbles kicked out.
- On October 4 she says Mr. G. sprayed water from a hose onto her living room window and onto her deck.
- On October 6 Ms. G. swore at her while she was taking a picture of how Ms. G. had parked her car. The landlord says that on the same day while she was out pulling weeds, Mr. G. spat on her three times and called her "a little f\*\*\*ing c\*\*t" and that his son shouted at her to "f\*\*k off" and to go back to her own country (the landlord has immigrated from East Asia). She says that on the same day, Mr. G. sprayed water from a hose into a toolbox container that she had put her cellphone in. The same day, the tenants put skeletons and ghosts in the backyard (these appear to have been Halloween decorations and were dealt with and dismissed in the November 19, 2014 decision of Arbitrator H.). The same day, she says, Mr. G. attached a note to her door indicating that his moving costs would be \$9000.00 or words to that effect. The landlord considers it was an attempt at blackmail. The same day she claims Mr. G. turned on the house alarm late at night to disturb her daughter.
- On October 7 she says Ms. G. took photos of her car and house. Later, Mr. G. threw a big envelope on her deck to upset her.
- On October 11 she discovered that the tenants had placed "two red eye monitors" to scare her. It was not clear whether these were security monitors or where they had been placed. On the same day the landlord determined that the tenants had cut off the heat to her home. She called the police. In her later materials she filed a copy of the police report. It indicates that Officer H. attended and determined the landlord was not operating her thermostat correctly.

- On October 12 two policemen came to her door late a night regarding a letter she has sent to Arbitrator K. and in which she indicated that the situation with her tenants was escalating to the point where “either he kills me or I kill him.” There is no evidence the tenants had seen the letter or had been worried about their physical safety. As a result of it falling into police hands, it appears the landlord has been charged with the criminal offence of uttering threats.

After the police left the landlord went out on her deck where she found another envelope from the tenants, dispute hearing material I assume. She threw it back down onto the tenants’ patio below. Unbeknownst to her, Mr. G. was sitting below and scared her by shouted up “f\*\*k you, R...” (R... is the name the landlord goes by). The police again attended and questioned her for two hours.

- On October 18 the police attended at the tenants’ suite for an unknown purpose.

- On October 23 the landlord summoned the police to accompany her while she served documents on the tenants. It appears that there had been a “no contact” order or agreement or undertaking imposed at that point.

- On October 24 the police attended and arrested the landlord. She thinks it was because Mr. G. made a false complaint that she’d threatened to kill him.

- On October 26 the landlord thinks Mr. G. put a plastic bug on the front yard pebble garden in order to scare her daughter.

- On October 28 the landlord received a call from the fire department regarding her fire alarms. She thinks Ms. G. reported that they had been going off every day, which was not true.

- On October 31 the landlord says Mr. G. attached a big letter to her door to tell her to send something to his son. The letter was not adduced at hearing. She found this rude and insulting.

- On November 5, the day the Notice in question was issued, the landlord says Ms. G. started parking her car on the front street in a manner designed to block entry to the front walkway.

At various times during her testimony, the landlord described the tenant Ms. G. and her son as being the victims of Mr. G.’s bullying and that the sole problem was Mr. G. whom

she repeatedly describes as a bully and a liar. At other times she indicated that Ms. G. was also a troublemaker.

The landlord also referred to older incidents, from before the last Notice and recent incidents, occurring after this November 5<sup>th</sup> Notice. They were considered as they might relate to credibility but not as grounds themselves for the Notice in question.

In response, the tenants' note that this is the third consecutive eviction Notice that they have had to challenge. They point to the decision of Arbitrator H., interpreting it to impose a ban on the landlord issuing any more eviction Notices (I have read the decision and it does not). They denied the landlord's allegations and imputations.

Mr. G. gave evidence to indicate that in May 2014 the landlord offered to let the tenants stay in the upstairs while workmen were repairing lower suite. He says that is indicative that the landlord is not afraid of him.

Ms. G. testified saying it was not her that called the Ministry about the landlord's daughter. She went through the landlord's claims, denying them all. She says it is the landlord who has been calling the police making false reports. She says it was the neighbour's alarm that was causing the problems, not any alarm in the house. She denies complaining to the bylaw enforcement people.

The tenants have installed a security camera at the patio in front of their entrance. Ms. G. referred to a number of still pictures from that camera, taken in October and November 2014, that show the landlord standing alone on the patio. She says that they prove the landlord is not afraid or intimidated by the tenants.

### Analysis

The ending of a tenancy is a very serious matter. A large portion of the populace rents their accommodation and will be renters throughout their life. The *Act* is intended to provide a tenant in British Columbia with the security of not losing his or her home except in the limited circumstances set out in it.

A landlord called on, as here, to justify a Notice to End Tenancy for cause is expected to provide cogent and persuasive evidence to establish cause on a balance of probabilities. Corroboration is one particularly helpful addition to the testimony of any party. Evidence from other sources tending to confirm one's testimony is of great assistance to an arbitrator. The landlord in this case is at a disadvantage in that regard

as she lives alone with her daughter, a girl too young to provide sound corroborative testimony. In most instances it was only the landlord who witnessed the incidents alleged. She has attempted to find corroboration in the police reports she has gone to some considerable effort to obtain. However, the reports filed merely corroborate the fact of a complaint having been made. In the case of the lack of heat allegation, the police report appears to exonerate the tenants from responsibility.

Perhaps that will change now that it appears both sides have armed themselves with security cameras.

I have reviewed the evidence in detail, including evidence not directly mentioned here and conclude that none of the incidents alleged by the landlord then denied by the tenants have been proved satisfactorily. The evidence presented does not establish that the tenants have been constantly fighting at home, or that either tenant has been bullying the landlord or blackmailing her or otherwise extorting money from her, or have caused damage or have been taking her mail, or have caused health to suffer by any wrongful act or have somehow jeopardized the landlord's daughter's safety.

Finding pebbles on a pathway, seeing a flashlight shone at a bedroom window once, finding a garbage can turned over, tripping over a hose on the ground, tenants taking out too many garbage bags, finding an envelope of evidence on the deck or putting a plastic bug on a rock are not of themselves or together incidents warranting eviction, even had they been proved.

For these reasons I allow the tenants' application and cancel the Notice.

Arbitrator K. noted in her decision of August 13, 2014 that both sides find the other's remarks hurtful and that it was clear to her that both sides participated in continuing the behaviour. That is my conclusion as well. There are indicators to suggest that the conduct of the parties may have advanced from hurtful remarks to the level of antagonism. I would caution both sides to revert to civil interaction between themselves at all times.

It would be beneficial to remark that in a residential tenancy where the tenant is not paying in full for his or her metered use of utilities would not normally be thought to include electrical service to a tenant's commercial trailer. As well, the evidence shows that Ms. G. has, on at least one occasion, parked her vehicle on the front street in a way that blocks ingress and egress to the stone pathway through the landlord's hedge to the front door. I would warn her against parking any portion of her vehicle across any portion of that opening in the future. The tenants have been provided with two parking

spots in the rear. Ms. G. is certainly entitled to park on the front street, but parking in the fashion described gives the appearance of being antagonistic to the landlord.

### Conclusion

The tenants' application is allowed. The Notice to End Tenancy dated November 5, 2014 is hereby cancelled. The tenants, having been successful, are entitled to recover \$50.00 of the filing fee. I authorize them to reduce their next rent due by \$50.00 in full satisfaction of that amount.

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: February 11, 2015

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Residential Tenancy Branch



