



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE GLENAYRE REALTY CHILLIWACK CO. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession pursuant to Sections 47, and 55 for cause; and
- b) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant to cancel a Notice to End Tenancy for cause.

### **SERVICE:**

Both parties attended and the tenant agreed they received personally the Notice to end Tenancy dated April 23, 2015 but did not receive the Application for Dispute Resolution which the landlord said was sent by registered mail. It was verified online that it was sent and notices were left and the tenant failed to pick it up. Normally this would be presumed to be deemed service pursuant to section 90 of the Act but it is a rebuttable presumption. I find the tenant rebutted this as she said they had a broken mail box and no key; the landlord confirmed this. I find that the tenant was not legally served with the documents according to sections 88 and 89 of the Act.

The tenant said they served their Application personally to the landlord's office. The landlord agreed they received it. I find the landlord was legally served with the Application.

### **Issue(s) to be Decided:**

The tenant was issued a Notice to End Tenancy dated April 23, 2015 for cause. Has the landlord proved on the balance of probabilities that there is good cause to end this tenancy and obtain an Order of Possession? Is the landlord entitled to recover the filing fee?

Or is the tenant entitled to any relief?

### **Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced on February 15, 2011, a security deposit of \$325 was paid and rent is \$650 a month.

The landlord served a Notice to End Tenancy dated April 23, 2015 to be effective May 31, 2015 pursuant to section 47 of the Act stating 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 landlord said that they had to serve three notices concerning noise issues to the tenants, one on March 23, a second on March 25 and a third on April 8, 2015. She said that they had had 6 complaints from all three levels of the building concerning the noise between this husband and wife. On April 8, 2015, the tenant signed a letter acknowledging the problem and saying that her husband had medical issues and was working on his medications and she would have a stern talk with him. However, the landlord said the problems continued and on April 22, 2015, the police attended for the husband was smashing up their furniture.

The tenant said there was not domestic fighting but her husband has medical issues and she has to speak extra loudly to explain things to him. She said she is aware it sounds like arguing and she is trying to get medication to assist him. She said she knew nothing about the Police coming but her husband had said they were there for he was mugged.

The landlord said the behaviour of the tenants is frightening to others in the building and the security person had to be called regarding fighting in the parking lot. The tenant said it is not fighting but they get upset sometimes. She accused the present manager of evicting everyone. The manager said she had had to evict some persons for unpaid rent since she took over the position almost a year ago but she had nothing against these tenants and had provided warning letters to them and they did not change their behaviour which was significantly disturbing other tenants. The landlord requested an Order of Possession if the tenants are not successful in setting aside the Notice to End Tenancy.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis:**

I find the Application of the landlord was not served on the tenant so the landlord's application is dismissed with leave to reapply.

In respect to the tenant's Application to set aside and cancel the Notice to End Tenancy, I find the weight of the evidence is that the tenants engage in loud arguments which are adversely affecting the quiet enjoyment, safety, security and physical well being of other occupants. I find the landlord's evidence credible that they have received six complaints from other residents regarding excessive noise. The landlord's credibility is supported by the tenant's evidence that she has to speak very loudly and sometimes argue with her husband as he has medical issues; I find it is also supported by one of the letters she signed. Although it may not be domestic fighting, I find the weight of the evidence is that the loud behaviour of these tenants is adversely affecting others which is good cause pursuant to section 47 to end the tenancy. The Notice to End Tenancy is confirmed. Pursuant to section 55 and the request of the landlord in the hearing, I find the landlord is entitled to an Order of Possession.

The parties agreed to an effective date of July 31, 2015 and the tenant agreed there would be no more incidents during the intervening time.

**Conclusion:**

I dismiss the landlord's Application due to insufficient service with leave to reapply and find them not entitled to recover filing fees for their Application.

The Application of the tenant is dismissed; the Notice to End Tenancy is confirmed. Pursuant to sections 47 and 55 of the Act, I find the landlord is entitled to an Order of Possession effective July 31, 2015.

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: June 16, 2015

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Residential Tenancy Branch

