



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, OPB, FF; CNC

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for cause and for breach of an agreement, pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated September 6, 2015 ("1 Month Notice") pursuant to section 66.

The landlord, the landlord's agent JH ("landlord's son"), and the tenant attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that his agent had authority to speak on his behalf at this hearing. This hearing lasted approximately 75 minutes in order to allow both parties to fully present their submissions.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The tenant confirmed receipt of the landlord's 1 Month Notice on September 6, 2015. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on September 6, 2015.

### Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to an order of possession for breach of an agreement?

Is the landlord entitled to recover the filing fee for his application from the tenant?

### Background and Evidence

While I have turned my mind to all of the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed that this month-to-month tenancy began on December 1, 2013. Monthly rent in the amount of \$450.00 is payable on the first day of each month. A security deposit of \$225.00 was paid by the tenant and the landlord continues to retain this deposit. A copy of the written tenancy agreement was provided for this hearing. The tenant continues to reside in the rental unit. The rental unit is one of three rooms in a basement suite of a house. Two other occupants, "S" and "T," reside in the other two rooms and share a common area with the tenant. The landlord's son lives in a separate room of the basement, which is sealed off from the other three rooms, but his room is next door to the tenant's room. The landlord and his wife occupy the main floor of the same house.

The landlord seeks an order of possession for breach of an agreement. The landlord stated that the tenant breached a mutual agreement to end tenancy, dated September 16, 2015 ("agreement"), for the tenant to vacate the rental unit at 1:00 p.m. on September 27, 2015. The landlord's son confirmed that he witnessed the tenant sign the agreement on September 16, 2015. The landlord's son noted that he was unable to give the tenant a copy of the agreement that same day because his printer ran out of ink, so a copy was given to the tenant the next day on September 17, 2015. The landlord claimed that the tenant agreed by way of text messages to sign the agreement but the tenant denied this. The tenant denied that he signed the agreement, stating that the landlord's son has no other witnesses to prove that he did.

The landlord also seeks an order of possession for cause based on the 1 Month Notice. The 1 Month Notice indicates an effective move-out date of October 10, 2015. The landlord issued the notice for the following reasons:

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

*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 stated that he did not wish to pursue the second reason indicated on the 1 Month Notice, regarding illegal activity. The landlord indicated that he only wished to pursue the first reason, regarding significant interference and unreasonable disturbance. The landlord stated that since July 2015, the police attended at the rental unit on an almost daily basis, asking to see the tenant. The landlord stated that he was unable to get specific information from the police regarding their visits, due to confidentiality. The landlord indicated that since S moved into the rental unit, the tenant has been unable to get along with him. The landlord explained that the tenant and S have accused each other of stealing the other's food and bicycles, and have called the police for this behaviour. The landlord maintained that the most recent visits from the police to see the tenant were on October 15 and 16, 2015.

The landlord's son stated that since the 1 Month Notice was issued to the tenant on September 6, 2015, he has personally heard the tenant and S arguing and yelling at each other often. The landlord noted that he has tried to mediate disputes between the tenant and S, to no avail. The landlord indicated that this behaviour has affected his family, who are embarrassed and uncomfortable when guests are visiting and family dinners are occurring, and has caused the landlord stress in being unable to resolve this situation. He stated that his wife is in fear when she is home alone and is afraid to approach the tenant or investigate the situation further. He noted that two homestay students, aged 19 and 20, live with him and his wife on the main floor of the rental unit. He stated that the yelling matches between the tenant and S stopped around mid-October 2015. The landlord's son explained that the tenant also swears and is aggressive when he is on the phone, waking him early in the morning.

The tenant testified that he is not aggressive and he does not yell. He noted that he has never argued with S regarding food. He indicated that the next door neighbours have been calling the police, not him. The tenant stated that he did not send a text message to the landlord on September 7, 2015 regarding S stealing his food and his intention to call the police about it again. He stated that he was warned about the neighbours when he first moved in, and that he has asked the police to deal with them. The tenant stated that the police forced their way into his room without a search warrant one time, so he

got upset, and then filed a complaint with the police commissioner. During the hearing, the tenant read aloud the response letter from the police, regarding his complaint.

### Analysis

#### *Breach of an agreement with the Landlord*

It is the landlord's burden of proof, on a balance of probabilities, to show that the tenant breached the mutual agreement to end tenancy. While I do not disbelieve the landlord's testimony that the tenant signed the agreement, the landlord has no other witnesses to support his claim and the tenant denied signing the agreement. I find that the text messages between the parties regarding this signing are unclear as they generally refer to documents that must be signed, not specifically the mutual agreement to end tenancy.

Therefore, on a balance of probabilities and for the reasons stated above, I dismiss the landlord's application for an order of possession for breach of an agreement without leave to reapply.

#### *1 Month Notice*

In accordance with subsection 47(4) of the *Act*, the tenant must file his application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month Notice on September 6, 2015 and filed his application for dispute resolution on September 10, 2015. Accordingly, the tenant filed within the ten day limit under the *Act*.

Where a tenant applies to dispute a 1 Month Notice within the required time limits, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

Generally, I found the landlord and his son to be credible witnesses at this hearing. I found that their testimony was direct and forthright. In contrast, I found the tenant's testimony to be less credible, as the tenant frequently changed his testimony in order to tailor it to support his claims. I reject the tenant's allegations that the landlord forged his signature on various documents and that the landlord fabricated or altered text messages between the parties. The tenant initially indicated that the majority of the text messages were fabricated but later recanted his testimony indicating that 90% of the text messages were correct but only certain unfavourable text messages were incorrect.

I accept the landlord's testimony that the text messages were printed using a specific application and were not altered or fabricated in any way.

Section 28(b) of the *Act* protects a tenant's right to quiet enjoyment and freedom from unreasonable disturbance. Residential Tenancy Policy Guideline #6 states that frequent and ongoing interference, if preventable by a landlord who stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. An example of such serious interference may include unreasonable and ongoing noise. Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable. However, vacating the rental premises, is not a requirement to show sufficient interference to breach the right to quiet enjoyment. A landlord can be held responsible for the actions of other tenants if the landlord is aware of a problem and failed to take reasonable steps to correct it.

While the tenant has found his neighbour's actions upsetting, his unsatisfactory interactions with his neighbour are not necessarily subject to intervention by his landlord. The tenant's neighbours are not occupants residing in the rental unit. Therefore, the landlord has no control over the actions of these neighbours.

However, residing in a multi-room basement suite sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*. Landlords often try to mediate such disputes if they can, but sometimes more formal action is required. In this case, the landlord has attempted to speak to the tenant as well as S and T to mediate disputes between the parties, without success. However, I see insufficient evidence to demonstrate that the landlord has failed to take appropriate action to follow up on concerns between the occupants.

I find that the landlord provided sufficient evidence that the tenant significantly interfered with and unreasonably disturbed other occupants and the landlord. I accept the landlord's evidence that the police have attended at the rental unit frequently in order to deal with complaints between the tenant and S. I accept the landlord's evidence that the tenant has been involved in frequent yelling altercations with S. The landlord's son has witnessed the tenant yelling and arguing with the police, as well as S. This has disturbed the landlord and his wife, who live on the main floor of the same house, as well as the landlord's son who lives in the basement suite and shares a wall with the

tenant. Since the 1 Month Notice was issued on September 6, 2015, the tenant's behaviour escalated into frequent yelling matches with S.

I find that the tenant's behaviour is a pattern which has caused a loss of quiet enjoyment to the landlord, his wife and son. I accept the landlord and his son's testimony that they have lost sleep, are disturbed when guests are over, are constantly in contact with the police dealing with the tenant, are stressed with their daily activities and schooling, and who are in fear of the tenant. The landlord has provided supporting documentary evidence, in the form of a timeline of events and text messages between the parties, regarding this behaviour.

Accordingly, I dismiss the tenant's application to cancel the 1 Month Notice, without leave to reapply.

The next issue is whether the landlord waived his right to pursue the 1 Month Notice. Residential Tenancy Policy Guideline 11 discusses the issue of waiver of a 1 Month Notice:

*A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties. The question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End has been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End, no question of "waiver" can arise as the landlord is entitled to that rent.*

*If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:*

- whether the receipt shows the money was received for use and occupation only.*
- whether the landlord specifically informed the tenant that the money would be for use and occupation only, and*
- the conduct of the parties.*

*There are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his*

*or her rights. Implied waiver can also arise where the conduct of a party is inconsistent with any other honest intention than an intention of waiver, provided that the other party concerned has been induced by such conduct to act upon the belief that there has been a waiver, and has changed his or her position to his or her detriment. To show implied waiver of a legal right, there must be a clear, unequivocal and decisive act of the party showing such purpose, or acts amount to an estoppel.*

The landlord testified that he accepted rent payments for October and November 2015, such that the tenant's rent is paid in full. Although the landlord accepted rent after the effective date on the 1 Month Notice of October 10, 2015, I do not find this to be a waiver of the 1 Month Notice. Both parties agreed that the landlord issued a rent receipt to the tenant indicating "use and occupancy only" for the October 3, 2015 rent payment. The landlord provided a copy of the receipt for this hearing. The landlord also stated that he issued a receipt for "use and occupancy only" for the November 2015 rent payment. The tenant did not withdraw his application to cancel the 1 Month Notice, at any time prior to this hearing. The landlord did not withdraw his application and submitted written evidence for this hearing that supports the 1 Month Notice and the landlord's intention to evict the tenant. The tenant was well aware of the landlord's intention to evict him and both parties made submissions at this hearing regarding a possible end to this tenancy. This is recent evidence of the landlord's intention to pursue the 1 Month Notice and obtain an order of possession against the tenant.

For the above reasons, and given the conduct of the parties, I find that the landlord did not waive his rights to pursue the 1 Month Notice and he did not waive the 1 Month Notice, whether expressly or impliedly. I find that the landlord did not intend to reinstate this tenancy, despite accepting rent payments after the effective date stated on the 1 Month Notice.

Based on my decision to dismiss the tenant's Application and uphold the landlord's 1 Month Notice, I find that this tenancy ended on the corrected effective date of the 1 Month Notice, October 31, 2015. As the tenant has paid rent for November 2015, I find that he is entitled to possession of the rental unit until the end of that month.

Accordingly, I find that the landlord is entitled to an Order of Possession, effective at 1:00 p.m. on November 30, 2015.

As the landlord was successful in his application, I find that he is entitled to recover the \$50.00 filing fee from the tenant.

### Conclusion

I grant an Order of Possession to the landlord **effective at 1:00 p.m. on November 30, 2015**. Should the tenant or any other occupants on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain \$50.00 from the tenant's security deposit in full satisfaction of the monetary award. The remainder of the tenant's security deposit in the amount of \$175.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

The landlord's application for an order of possession for breach of an agreement is dismissed without leave to reapply.

The tenant's application to cancel the landlord's 1 Month Notice, dated September 6, 2015, is dismissed without leave to reapply.

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 16, 2015

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Residential Tenancy Branch



