



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding G & M ENTERPRISES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing by conference call and gave affirmed testimony. The landlord acknowledged receiving the tenant's notice of hearing package and the submitted documentary evidence. The tenant acknowledged receiving the landlord's submitted documentary evidence. I accept the undisputed testimony of both parties and find that each party has been properly served as per sections 88 and 89 of the Act.

At the outset the tenant, G.M. withdrew the request for an order requiring the landlord to comply with the Act, regulation or tenancy agreement as this was a clerical error on his part and that he was unable to provide any details of why this selection was made on the application. As such no further action is required for this portion of the application.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

### Background and Evidence

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

This tenancy began on April 1, 2012 on a month-to-month tenancy as shown by the submitted copy of the signed tenancy agreement dated July 22, 2014. The monthly rent is \$1,250.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$600.00 was paid on April 1, 2012.

The landlord stated that the tenant was served with a 1 Month Notice dated December 22, 2015 in person. The tenant confirmed service of the 1 Month Notice in this manner.

The 1 Month Notice dated December 22, 2015 states an effective end of tenancy date of January 31, 2016 and provides two reasons for cause listed as:

- the tenant or person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant seeks an order cancelling the 1 Month Notice dated December 22, 2015. The landlord stated that he wished for the 1 Month Notice to be upheld to end the tenancy.

The landlord stated that the 1 Month Notice was issued following the issuance of a Breach Letter dated November 18, 2015 to the tenant. The letter stated that over 4 complaints were filed by neighbors on November 14, 2015 between the hours of 11pm and 3:30am regarding noise and disturbing the peace.

The landlord stated that the first occasion of a complaint was in December of 2014 when 4 different tenants notified the landlord about excessive noise between the hours of 10:30pm and 3:30am. The landlord stated that tenants (#201, #202, #101 and #308) complained of excessive noise. The landlord stated the landlord's agent attended the rental unit and that a verbal warning was given to the tenants to stop the excessive noise.

The tenants confirmed that on this occasion that a few friends were over. The tenants stated that once they were informed of the noise issue that all noise was reduced immediately. The tenants disputed the landlord's claim that the landlord's agent attended to the rental unit.

The landlord stated that on November 14, 2015 4 different tenants (#201, #202, #101 and #308) notified the landlord about excessive noise between the hours 11:00pm and 3:30am.

The tenants confirmed on this date that gathering occurred with 8 people and once the landlord attended to inform them of the excessive noise that all noise was ended and all parties left.

The landlord stated that a breach letter dated November 18, 2015 was given to the tenants warning them of a disturbance on November 14, 2015. The letter also stated,

*In future we ask that you ensure this behaviour is not repeated. Any activity that unreasonably disturbs other tenants in the building is unacceptable...Failure to comply with our Residential Tenancy Agreement immediately will result in a one (1) month Notice To End A Residential Tenancy being served on yourself pursuant to Section 47(1)(d) and (h) of the Residential Tenancy Act..*

The landlord stated that on December 19, 2015 tenants (#201, #202 and #101) made complaints to the landlord about excessive noise coming from the tenants' unit between the hours 11:00pm and 1:45pm. The landlord stated that the tenants were contacted to stop the noise.

The tenants confirmed that on this date that a gathering occurred with less than 10 people. The tenants confirmed that the landlord contacted them by telephone at 1:30am regarding excessive noise. The tenants stated that all possible noise was reduced immediately upon being notified.

The landlord stated that the tenants have established a pattern of behaviour that is not conducive to the rental premises and wish to end the tenancy.

The tenants acknowledged that they did not realize the extent of the complaints and that the landlord's actions in serving them a breach letter dated November 18, 2015 was excessive. The tenants have submitted a copy of a petition to the landlord from 20 of the 24 tenants in the rental premises which states:

*We the undersigned have not been unreasonably disturbed by the tenants of 301 and object to this action to have the Tenants evicted from the building. We are in support of the Tenants and request the eviction notice be rescinded.*

The tenants have also submitted copies of 4 letters from other tenants confirming their support of these tenants.

The landlord has also submitted a response to the petition provided by the tenants and states:

*I was not aware of the context or content of the petition. Accordingly, please remove my name from the petition. Thank You.*

This response petition is from 15 of 23 listed tenants of the rental premises. The landlord has also provided copies of 3 letters confirming the noise complaints of the tenants.

The landlord also stated that these complaints from other occupants of the rental premises which have not been corrected after written notice (breach letter dated November 18, 2015) clearly shows that the tenants are in contravention of clause #17 of the signed tenancy agreement which states:

*Conduct: In order to promote the safety, welfare, enjoyment, and comfort of other occupants and tenants of the residential property and the landlord, the tenant or the tenant's guests must not disturb, harass, or annoy another occupant of the residential property. In addition noise or behaviour, which in the reasonable opinion of the landlord may disturb the comfort of any occupant of the residential property or other person, must not be made by the tenant or the tenant's guests, nor must any noise be repeated or persisted after a request to discontinue such noise or behaviour has been made by the landlord. The tenant or tenant's guest must not cause or allow loud conversation or noise to disturb the quiet enjoyment of another occupant of the residential property or other person at any time, and in particular between the hours of 10:00 pm and 9:00 am... The landlord may end the tenancy pursuant to the Act as one of his remedies.*

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

On December 22, 2015, the landlord served the tenant with the 1 Month Notice. The 1 Month Notice set out that it was being given as:

- the tenant or person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

I find based upon the undisputed affirmed testimony of both parties that the landlord has established his reason for cause as stipulated in the breach letter dated November 18, 2015. Both tenants confirmed the noise incidents and confirmed receiving and reading it the breach letter. Both parties stated that they understood the letter, but chose to disregard the warning as they felt they had a good relationship with the landlord. The tenants both stated that they failed to understand serious nature of the verbal warnings and the breach letter. The tenants' application to cancel the 1 Month Notice is dismissed. The 1 Month Notice dated December 22, 2015 is upheld. The landlord is granted an order of possession.

### Conclusion

The tenants' application is dismissed.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 16, 2016

---

Residential Tenancy Branch

