



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, CNC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to be allowed more time to make an application to cancel a notice to end tenancy and to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on December 18, 2015.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Preliminary matter

At the outset of the hearing, the landlord’s agent agreed that the tenant was out of town when the Notice was served and is not objecting to allow the tenant more time and have the application heard on the merits of the Notice.

Therefore, as the landlord is in agreement to allow the tenant more time to cancel the Notice, I grant the tenant more time to make that application.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issue to be Decided

Should the Notice be cancelled?

### Background and Evidence

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on January 31, 2015.

Although the Notice states several reasons the landlord is proceeding on the following reason that the tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- put the landlord's property at significant risk.

The landlord's witness (the "Officer") testified that he is a police officer and on November 24, 2015, they attended the rental unit to execute a warrant on SB, the tenant's son, for theft charges. The officer stated that SB has informed them that SB uses that address as their place of residence. However, SB was not there at the time to execute the warrant.

The Officer testified that criminal charges were laid against SB, for incidents that occurred on December 14, 2015, with SB having underage girls inside the rental unit and providing them with drugs and alcohol.

The charges were as follows:

- Count #1 Sexual interference of a person under 16, contrary to section 151 of the Criminal Code;
- Count #2 Sexual interference of a person under 16, contrary to section 151 of the Criminal Code;
- Count #3 Administer noxious thing with intent to annoy, contrary to section 245(b) of the Criminal Code;
- Count #4 Administer noxious thing with intent to annoy, contrary to section 245(b) of the Criminal Code;
- Count #5 Sexual interference of a person under 16, contrary to section 151 of the Criminal Code; and
- Count #6 Administer noxious thing with intent to annoy, contrary to section 245(b) of the Criminal Code.

The Officer testified that SB plead guilty to the above charges. Filed in evidence is a copy of the court services online criminal file.

The Officer testified that on December 30, 2015, they were called to the rental building as SB was observed outside of behaving in an erratic matter and was arrested. The witness stated that when SB was asked to provide a urine sample SB informed them that the sample would show that he had taken crystal meth, cocaine and marihuana.

The Officer stated that the drugs were used in the rental unit on this date and for the criminal incidents that occurred on December 14, 2015.

The landlord's agent testified that on December 15, 2015, the police also attended the rental unit and spoke with the tenant as they were looking for Jack, which is also one of many alias used by SB, and the tenant informed the police that they had not seen their son all day. Filed in evidence is a court record of 11 alias used by SB.

The landlord's agent testified that the occupant that resides by the tenant watched SB leaving the apartment at around 9:00am on December 15, 2015, with a girl with punk hair, which is the morning after the criminal offences took place .

The landlord's agent stated that the occupant then opened the door and said to the police that they have information about Jack that would be helpful and the tenant screamed profanity at the occupant.

Filed in evidence is a hand written statement of the occupant at page 37 and 38 of the landlord's evidence. I note the letter also states that they saw the tenant's son arriving later in the day using their own key.

Filed in evidence is letter for VD, dated January 25, 2016, which in part reads,

"Just to let you know Jack was here, you may know this already around 12:40 I was outside having a cigarette, and then ... had come out and he was saying the police okayed him to come here and get his stuff and I believe that's what's he did I don't know, I just didn't do anything he had his own keys opened the door and went in..."

[Reproduced as written]

The tenant testified that they were not home when the incident of December 14, 2015, occurred or the incident of December 30, 2015, and should not be held responsible for the actions of their son SB as he is almost 40 years old. The tenant stated that their son does not live with them and did not obtain their permission to use their address for his residence.

The tenant testified that they denied the police attend on December 15, 2015, and state that it was a different day that they yelled at the occupant. The tenant stated that they believe the occupant is getting involved because they had a sexual relationship previously and has been stalker them ever since.

The tenant acknowledged that they are aware that their son has a lengthy criminal history. The tenant indicated that they also have a criminal record.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- put the landlord's property at significant risk.

The tenant's son has access to the rental unit by using a key. There is no evidence that the SB, obtained the key illegally, and if so, it would have been reasonable for the tenant to either contact the police or at the very least have the lock changed to prevent access.

In this case, the tenant is aware that their son, who is almost 40 years old son has a lengthy criminal history. On November 24, 2015, the police attended the rental unit to attempt to execute a warrant on the tenant's son SB. On December 14, 2015, the tenant allowed their son to have access in the rental unit, in which sexual interference occurred to underage girls and alcohol and drugs were provided. SB pleaded guilty to those charges.

On December 15, 2015, the written submission of the occupant, watched SB leave earlier that morning with a girl and later returns using his own key. The written submission states that when the police attended at the tenant's rental unit asking about SB or Jack, the tenant was overheard by the occupant telling the police that they had not seen him all day and when the occupant attempted to inform the police the tenant started to scream using inappropriate language.

While the tenant denies this incident, I prefer the evidence of the occupant as it would be reasonable for the police to attend on this day after the events that occurred on December 14, 2015.

On December 30, 2015, the police were contacted by an occupant or the landlord as SB was acting erratically on the premises. SB was arrested outside and admitted to using several narcotics.

Further, even after the tenant was issued the Notice and the tenant was fully aware their tenancy was at risk, they allowed SB access to the rental unit. As on January 25, 2016, SB was seen entering using their own key.

I find the tenant's son a person that the tenant has permitted on the property has seriously jeopardized the health, safety or lawful rights of another occupant or the landlord, by using drugs, administering drugs to minors and conducting illegal activities and this has put the landlord's property at serious risk.

I find the Notice issued on December 18, 2015, has been proven by the landlord and is valid and enforceable. Therefore, I dismiss the tenant's application to cancel the Notice.

I find the tenancy legally ended on January 31, 2016, and the tenant is now overholding the rental premise. I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant.

### Conclusion

The tenant's application to cancel the Notice, issued on December 18, 2015 is dismissed. The landlord is granted an order of possession, pursuant to section 55 of the Act.

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: March 1, 2016

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Residential Tenancy Branch

