



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Devon Properties  
and [tenant name suppressed to protect privacy]

## **FINAL DECISION**

### Dispute Codes:

CNC

### Introduction

The tenant has applied to cancel a one month Notice to end tenancy for cause that was issued on December 28, 2015 and to recover the filing fee cost from the landlord.

Both parties were present at the hearing held on February 24, 2016. On February 25, 2016 an interim decision was issued, reconvening the hearing to March 10, 2016 at 10:30 a.m.

At the start of the reconvened hearing the parties were reminded they continue to provide affirmed testimony. The same parties for the landlord attended on March 10, 2016. The tenant had legal counsel attend the March 20, 2016 hearing.

The hearing held on February 24, 2016 concluded after 96 minutes. The final hearing was concluded after each party was given the opportunity make final submissions; which required 12 minutes.

I have considered the all relevant evidence before me.

### Issue(s) to be Decided

Should the one month Notice ending tenancy for cause issued on December 28, 2015 be cancelled or must the landlord be issued an Order of possession?

### Background and Evidence

The basic facts of the tenancy were set out in the February 25, 2016 interim decision.

The landlord and the tenant agreed that a one month Notice to end tenancy for cause was served on the tenant indicating that the tenant was required to vacate the rental unit on January 31, 2016.

The one year, fixed-term tenancy commenced on March 1, 2015. Rent is \$715.00 per month, due by the first day of each month. The landlord is holding a security deposit in the sum of \$357.50. A copy of the tenancy agreement was supplied as evidence.

The reason stated for the Notice to End Tenancy was 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.*

The landlord set out a number of complaints made by the tenant, since April 2015, against the two tenants of unit 308, directly above his unit. Those tenants had lived in the building since 2007 and during that time not a single complaint was made in relation to those individuals. The tenant resides in unit 208.

The landlord provided a written summary of the complaints made by the tenant and the resulting investigation carried out by the on-site managers:

- April 14, 2015: The tenant complained about noise that commenced at 3:45 a.m. The on-site manager went to unit 308 for about 20 minutes and could not hear any significant sound. One half hour later the tenant called the manager to again report noise and again the manager went to the third floor and could not hear any sound. The manager then checked with other occupants around the tenants' unit. Only the occupants of 308 had any complaint; they said they had to approach the tenant to turn down his music.
- April 17, 2015: A letter was issued to the tenant, in response to his request to vacate. The landlord rejected this option and said they would respond to any issues. The landlord explained that a noise is a problem if it is excessive. The letter explained that no other tenants were reporting issues in relation to unit 308. The landlord said that at this time the tenants' complaints were unsubstantiated.
- July 23, 2015: A written complaint was submitted by the tenants of unit 308. They reported that the tenant in 208 was playing loud music, which would vibrate their suite. The occupants reported that on July 13, 2015 the tenant was banging on their ceiling and his walls and that similar incidents had occurred when they were walking in their unit. On June 20, 2015 the tenant had yelled at the tenant of 308 when they were sweeping their deck. The tenants of 308 said they were considering vacating.
- September 9, 2015: The tenant of 208 phoned the manager regarding noise at approximately 1:00 p.m. The manager was showing a unit and when finished he went to the unit, where he could hear the tenants' radio. The manager returned to the unit two times but could not hear any noise. The tenant told the manager that the noise had ceased. The manager notes indicated that on September 11,

2015 he spoke with the occupants of unit 308 who said they can be doing nothing at all and the tenant will begin to bang on the walls.

- September 26, 2015: The tenant in 208 called the manager at 8:30 a.m. to report noise from 308. The manager went to the tenants' unit but could not hear anything. He remained in the unit for 15 minutes and when no noise was heard the tenant said the occupants of 308 must have left the unit. The tenant said the noise had awakened him.
- September 28, 2015: The occupants of 308 reported that the person living below them played his music very loud on September 23, 2015. The occupants reported this had been an on-going issue for several months and had been mentioned in their previous report. When management was contacted on September 23, 2015 the music was turned down. The next morning the tenant yelled at the occupant as she was crossing the parking lot; the tenant screamed at the occupant, saying they must stop stomping around or he would crank up his music again. The occupant wrote that the tenant frequently *"throws angry fits, slamming doors, stomping, and banging walls, which creates a very tense and upsetting living environment. I feel he is going out of his way to be spiteful and rude in an effort to intimidate me."* (Reproduced as written.)
- October 25, 2015: The tenant in 208 complained of loud bass coming from unit 308 at 4:20 p.m. The manager remained in 208 for five minutes but heard nothing.
- October 27, 2015: The tenant in 208 reported excessive bass being played by the occupants of 308 for a period of several hours. The music began at 7:40 a.m. a.m. and lasted several hours. A tenant in unit 207 advised of the same problem.
- October 27, 2015: The tenant in 208 complained about loud music and bass coming through the floor at 10:00 a.m. This was heard all day on October 25, 2015.
- On October 30, 2015 the tenant in 208 made a complaint about the police coming to investigate an alleged assault against him. The tenant then told the landlord he had been mistaken and he was charging the people in unit 308 with harassment as they play their music loud and then stop it before the landlord can arrive. The tenants in 308 turn the water on and off which causes the tenant to experience burns. The tenant then said the police would attend when they had time.
- October 30, 2015: The tenant in 208 reported loud bass coming from unit 308 at 9:15 a.m.; when the landlord arrived four or five minutes later there was no sound to be heard; it was "dead quiet."

On September 25, 2015 the landlord sent the tenant a letter regarding his repeated complaints made and an allegation by the tenants of 308 that the tenant was retaliating by turning up his stereo. The landlord states that they will only respond to complaints if the noise is occurring at the time the complaint is made. The tenant was warned that they had received complaints that he was increasing the volume of his stereo as retaliation. The tenant was warned not to shout at other tenants. The landlord stated "we have received reports you have increased the volume on your stereo as retaliation for any perceived noise by your neighbours; "this is unacceptable and will not be tolerated." The landlord reminded the tenant that he had told the relief manager he would escalate his actions toward the residents in 308. The landlord informed the tenant that the tenants in the upper unit had been warned of his threat of escalation. The landlord asked the tenant to find other accommodation and offered to waive the liquidated damages clause of the tenancy agreement.

- November 7, 2015: At 9:45 a.m. the tenant in 208 reported a loud noise, described as a "dance party." The landlord went and could hear some music but nothing in excess. The landlord went to unit 308; they were about to have breakfast and were surprised at the complaint. They said they had not been playing any music.
- November 9, 2015: Tenant in 308 reported noise coming from 208; banging on the walls at 8:20 a.m.

On November 16, 2015 the landlord issued a letter to the tenant. The tenant was reminded of his repeated complaints made. The landlord states that they have responded and cannot find any noise being caused. No other occupants have complained and the tenants in 308 say they do not make any noise. The landlord states they cannot fix a problem that does not exist and that they are wasting their time attending to the tenants' suite to investigate problems that do not exist. The tenant was told to cease banging on his ceiling as it disturbs the tenants above him. The landlord made another offer that the tenant vacate, as they could not see a solution. The landlord was willing to waive the liquidated damages clause of the tenancy agreement.

After the November 16, 2015 letter the tenants in 308 made reports on December 11, 2015 that the tenant below "threw another fit...banging on walls, slamming doors, possibly throwing items, and yelling. This went on for about 10 minutes."

On December 18, 2015 the landlord wrote another letter to the tenant. The landlord reiterated that the tenant must cease banging on his ceiling when he allegedly hears noise. The tenant was told that if he has cause to complain about excessive and enduring noise, to call the manager. The tenant was warned if he continued to disturb the neighbours he would be evicted.

On December 24, 2015 the tenants of 308 submitted an incident report to the landlord. The tenants said that the person in 208 frequently complained about them and had

called the police on numerous occasions. The person in 208 throws fits of rage and banging on the ceiling with a stick or broom handle, going from room to room. The day prior that behaviour had carried on for 10 hours. The tenant said she felt threatened by his loud, aggressive angry outbursts.

On December 24, 2015 the landlord and tenant were approached by the tenant of 308 in the lobby. The tenant told them she was concerned as they were having family over and was afraid the tenant would begin to bang on the wall and slam doors.

An incident report was issued on December 25, 2015 in response to a complaint made by the tenant of 208, of loud music coming from 308 at 8:15 a.m. The landlord immediately went to 308 and he could not hear any music. While at unit 308 the landlord heard banging coming from unit 208 and doors slamming. The tenant of unit 308 was very upset and concerned.

On December 27, 2015 a tenant of unit 308 sent the landlord an email setting out concerns they had regarding the tenant of unit 208. They believed the tenants' behaviour was worsening. The tenant said on December 23, 2015 the tenant of 208 pounded on his washroom walls and that he followed the tenant from room to room, pounding on walls. He carried on for over three hours. The tenants have endured ongoing problems but had decided this major outburst should be reported.

The tenants in 308 wrote that on December 24, 2015 they had company; they had been nervous about this due to the behaviour of the tenant in 208. On Christmas morning the tenant in 208 turned up his stereo, cranking it for about five seconds, he then banged on the doors, walls and slammed his sliding glass door. They could hear him stomping through his unit. After the landlord left, coming to their unit as the result of a complaint made by 208, the police arrived. The officer was invited into the unit and the tenants explained the situation to him. The officer said he considered the tenants in 308 as the complainants. The officer said the tenant of 208 had asked him if he "must go upstairs and deal with this myself." The officer was sent to speak with B.F. The tenants said they were feeling threatened.

The landlords' employee B.F. issued an incident report regarding a report made by the tenant in 208 at 8:15 a.m. on December 25, 2015. The tenant complained of loud music. B.F. went to unit 308 and could not hear any music, but he could hear the tenant in 208 banging and slamming doors.

After B.F. had been to unit 308 the police arrived at his door. The police officer told B.F. there was nothing he could do. The officer said that the police were fed up with this, as they had been to the unit three times that week. The officer suggested that the person in unit 208 be evicted. The police said they believed the problem was with the person in unit 208. B.F. issued a written incident report.

On December 28, 2015 the landlord issued the Notice ending tenancy and a letter, setting out the reasons. The landlord informed the tenant that as a result of the

numerous noise complaints and the police being called, and verbal and written warnings in the absence of any cooperation that his tenancy must end.

On December 28, 2015 the tenant emailed the landlord to make a complaint regarding Christmas morning and to report that the tenants of 308 were "messaging with the faucets" while he takes a bath or shower; causing burns to his surgical area. The tenant sent an email to the landlord stating that he had only called the police on three occasions. The tenant said he felt harassed by the tenants of unit 308.

The tenant made another complaint against unit 308 on December 29, 2015. The landlord responded that despite all of the unwarranted complaints, they would investigate. The landlord went to unit 308 and no noise was heard.

The landlord said that on February 13, 2016 the tenants in 308 moved out. They had planned to purchase a home but after the issues they experienced they expedited their plans and left earlier than planned.

The landlord said that two days after the tenants of 308 vacated the tenant in 208 called to complain about the new tenants above him. No one had moved into the unit. The landlord said when he went to unit 208 he could hear a very slight sound of bass, very low. This was at 6:15 p.m. He checked with other units and could not establish the origin of this sound. He said it was not disturbing. The building is wood-framed building and there are sounds of living that can be expected.

The landlord is now very hesitant to move anyone into the unit above the tenant. They have had enquires but have not allowed the unit to be occupied as they fear there will be a repeat of the behaviour by the tenant in unit 208. The people who moved out of unit 308 did not want to testify as they did not want the tenant to know their names.

The tenant said that in September 2015 it was explained to him that this was a wood-framed building and he could expect sounds.

The tenant said he did yell out at the tenant in 308 when she was on her balcony. She had swept some debris down onto his patio where he sitting having coffee.

The tenant denied having yelled at the tenant when she was in the parking lot.

When asked if he had complained about music the tenant responded that he was embarrassed; and that he would call after waiting 15 minutes. The tenant was upset with B.F. who would "push back" and who initially refused to respond.

When asked about calls to the police the tenant could not provide dates he called, but this occurred when the tenants' music was going up and down. The tenant recalled contacting the police in late November, 2015; perhaps two weeks later and on Christmas morning. The tenant said the noise made on December 24, 2015 was "phenomenal." The tenants were having a house party.

I asked the tenant to respond to the incident report issued on December 25, 2015 regarding the report he made in the morning. The tenant said he was waiting to receive copies of the police reports; no officer would provide a comment on their content, so he must wait for the report.

The tenant mentioned some health issues and said he is ill, unshaven and large; so he could be perceived as something that he is not. The tenant said that since the tenants of 308 are no longer in the unit no further noise complaints will occur. The tenant said he did not blame them for being upset. The tenant said that based on the landlords' evidence he would feel the same way the landlord does.

The tenant stated that what the landlord heard on February 15, 2016 was the sound the tenant has experienced all along. The tenant said it was a sound of low bass. The tenant denied having banged on the ceiling of his unit and said on one occasion he was at work when it was alleged he had banged.

The tenant stated that the landlord did not investigate the allegations made by the tenants of 308 in the same way they investigated his complaints. If the landlord had done so they would not have pursued an end of tenancy. The tenant submitted that he has never threatened anyone or come close to causing harm. The tenant submitted that in September 2015 he had his stereo disconnected.

The tenant provided testimony in response to the landlords' Notice during the initial hearing. At the reconvened hearing the tenant had no other submissions in response to the landlords' evidence. The tenants' legal counsel made brief submissions.

### Analysis

Based on the evidence before me I find that the landlord has provided sufficient evidence in support of the reason given on the Notice to end tenancy issued on December 28, 2015.

I find that the landlord has provided ample evidence of actions taken by the tenant that resulted in on-going disturbance to the tenants of 308. The landlord supplied copies of well-documented incident reports setting the repeated complaints made by the tenant. From the evidence before me I find that all but one of the complaints was unfounded and resulted in on-going disturbance to the tenants in unit 308.

I find, that despite their obvious frustration with the tenant, that the landlord took the complaints seriously and investigated them on behalf of the tenant. From the evidence before me I can find no reason that would suggest the tenant's concerns were minimized; the landlord demonstrated a desire to address legitimate concerns. When the reports of disturbance were not substantiated the tenant was warned that he must not report minor incidents of sound that could be expected.

Between April 2015 and the time the Notice was issued the tenant made multiple complaints against the tenants of unit 308. Only on one occasion did another tenant report hearing a noise. The tenant called the police to the building on three occasions between November and December 2015; no evidence of any substantiated incident was supplied supporting police contact made by the tenant.

Despite the absence at this hearing, of the tenants who lived in unit 308, I found the written evidence of their incident reports reliable and consistent. The written submissions pointed to tenants who were reasonable; yet concerned and frustrated by the tenant in 208. On one occasion when he was in unit 308 the landlords' employee heard the tenant banging and slamming doors; which supports the written allegations made by the tenants in 308. Those tenants had lived in the building for seven years and there had never been one complaint made against them. I find, on the balance of probabilities that this fact supports the landlords' submission that the root of the problem was with the tenant in unit 208.

After months of unsubstantiated complaints, which I find the landlord diligently investigated, the tenant chose to contact the police on Christmas day regarding what he referred to as a loud music playing at 8:35 a.m. The incident reported on December 25, 2015 was the final episode that resulted in the landlord issuing the Notice ending tenancy.

I find that the sounds tenant has reported hearing can be expected in a wood-framed, multi-unit building. During the day people will move about, play their radios and stereo's and have guests. From the evidence before me I find that the tenant had no tolerance for those sounds and insisted on making complaints. The tenant said that on February 15, 2016 the landlord heard the sound that had been causing him to complain. That sound was described by the landlord as a very faint bass. The sound described by the landlord, heard on February 15, 2016 was very, very low and not loud. If I accept the tenants' submission that this was the same sound that had resulted in his complaints then I would logically find those complaints to have been frivolous. I find that the sound of very low bass would not be unexpected in a wood-frame building and would not support the repeated complaints and calls made to the police.

Based on the repeated complaints that required the landlord to attend at unit 308 and the reports that the tenant was causing disturbances by banging the ceiling and slamming doors I find that the landlord has proven the actions of the tenant resulted in a significant disturbance to the tenants in unit 308. This is further supported by at least three occasions when the tenant called the police to investigate the tenants in unit 308. None of the police calls were proven to be founded. In fact, the incident report issued by the landlord regarding December 25, 2015 indicated that there police were frustrated and believed the problem was with the tenant in unit 208. The landlord was also present on one occasion in unit 308 when he heard the tenant in 208 banging and slamming doors in 208.



I accept the landlords' submission that the tenants of unit 308 expedited their move out of the building as a result of the tenant's behaviour. From the evidence before me I find that those tenants were frustrated, feeling harassed and somewhat fearful of the tenant. There was no evidence before me to support any unreasonable disturbance caused by the tenants in unit 308; yet the landlord took all complaints seriously by investigating and issuing letters of warning to the tenant in 208.

Therefore, I find that the landlord has proven, on the balance of probabilities that the tenant caused an unreasonable disturbance to the tenants of unit 308 by making repeated, unfounded complaints to the landlord and the police. I have determined that the tenant unreasonably disturbed the tenants of unit 308 and, as a result, find that the reason given on the one month Notice to end tenancy for cause issued on December 28, 2015 is supported. I find that the Notice ending tenancy is of full force and effect and that the tenants' application is dismissed.

Section 55(1) of the Act provides.

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

*(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*  
*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

Therefore, as the tenants' application is dismissed I find that the landlord must be issued an Order of possession.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find, pursuant to section 44(f) of the Act that the tenancy ended on the effective date of the Notice; January 31, 2016. The tenant has owed per diem rent since that time.

If the tenant has paid any rent beyond the vacancy date that rent, calculated on a per diem basis, and should be returned to the tenant.

### Conclusion

The one month Notice to end tenancy for cause issued on December 28, 2015 is of full force and effect. The tenancy ended effective January 31, 2016.

The landlord is entitled to an Order of possession.

This final decision should be read in conjunction with the interim decision issued on February 24, 2016.

This decision is final and binding and 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 11, 2016

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Residential Tenancy Branch

