



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KIWANIS SENIOR HOUSING OF W. VANCOUVER BC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order to cancel a One Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of this application.

The tenant and an agent for the landlord (the landlord) attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

### Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy for Cause?

### Background and Evidence

The parties agreed that this month to month tenancy started on February 12, 2014. Rent for this unit is currently \$1,163.00 per month due on the 1<sup>st</sup> of each month.

The landlord testified that the tenant was served a One Month Notice to End Tenancy for Cause (the Notice) by posting it to the tenant's door on June 24, 2016. The Notice has an effective date of July 31, 2016 and provided the following reasons to end the tenancy:

- 1) *The tenant or a person permitted on the residential property by the tenant has*
  - (i) *Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
  - (ii) *Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,*

The landlord testified that the tenant has constantly harassed and disturbed other tenants. The tenant accuses the tenant living in the unit below of being a junky and using toxic chemicals to cover the smell which could cause cancer. The tenant bangs repeatedly on his floor often late at night which has disturbed the other tenant. The tenant below has complained many times to the landlord and has called the police about the tenant on at least two occasions. The landlord and the police have both investigated the tenant's concerns with the tenant below but have found that tenant keeps his unit in an immaculate condition and there is no evidence of any drug use or toxic smells.

The landlord testified that they discovered that the tenant had also resided at another of the landlord's buildings and he made the same complaints about a neighboring tenant there and reacted in the same manner. The landlord feels this is a pattern with the tenant and he referred to his documentary evidence provided from the period the tenant resided at the other building to show the same pattern of complaints and actions made against other tenants.

The landlord testified that the tenant also harnesses other tenants in the common areas and three or more tenants have expressed concerns and have threatened to end their tenancies as a result of this tenant's behavior. The landlord testified that they have also received complaints from a family member of a senior tenant living above this tenant who has complained in writing about noise from this tenant's unit. This noise has frightened this elderly tenant.

The landlord testified that even if the tenant below was using anything with toxic fumes the air flow system in the building does not allow toxic fumes to flow between the floors. The tenant has been given numerous warning letters about his behavior, warning him that this is unacceptable and will jeopardize his tenancy if it should continue; however, the tenant has ignored these warnings and has continued to significantly disturb other tenants. The landlord seeks an Order of Possession for the end of August, 2016.

The tenant testified that he was always happy in the building for the first six to eight months but then started to experience toxic fumes from the unit below. The tenant testified that he went to speak to the landlord's administration office to deal with this and for them to ask the tenant below not to use toxins to cover up smells of drugs but his request was ignored for a year. The tenant testified that as soon as the tenant below starts to use drugs the tenant gets a headache. The tenant below did call the police and when the police spoke to the tenant they sympathized with him and said drug users use toxins to cover up the smell of drugs.

The tenant testified that this agent for the landlord only comes once a month or once a week to the building and has been fed information by the admin staff. The tenant testified that the problems he had in the landlord's other building was to do with a drunk tenant and the landlord later found out the tenant had been right about the other tenant being drunk but they did not document that and twisted the facts. The tenant testified in this building he called someone from the admin office and she came and could smell the toxins.

The landlord testified that the person referred to by the tenant, works in the other building and not this one. There are no records of any toxic chemicals or drugs being used in the building. In the previous tenancy the tenant's complaints were all to do with the same issues as shown in the documentation provided from the tenant's previous tenancy.

The tenant asked the landlord why the landlord did not verify the tenant's complaints with him. The landlord responded that the tenant's complaints were responded to and investigated. The landlord's agents visited the unit below the tenant and interviewed that tenant and inspected his unit. No drug use or toxins were found and this was confirmed by

the police who also investigated. The landlord testified that this is normal practise when a compliant comes in; the landlord investigates and attempts to resolve it. As nothing was found there could be no resolution.

The tenant referred to his documentary evidence and the letters from his doctor which states, in part, that he is extremely sorry for any distress he caused to his neighbour; however, he was, and has been frustrated because of the fumes that have irritated his lungs, that he required hospitalization and that the toxins and fumes affected his behaviour negatively to temporary alter his personality. In the second letter the tenant's doctor writes that the tenant has been hospitalized three times directly as a consequence of exposure to airborne toxins emanating from the suite below his unit. The letter goes on to state that the tenant became frustrated and felt he had to deal with the exposure himself to prevent further hospitalization and thus began banging on the floor of his suite to stop the toxins/fumes from traveling into his suite.

### Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows: Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

After consideration of the above, I find there is sufficient evidence to prove the reasons listed on the 1 Month Notice issued on June 24, 2016. It appears from this tenancy and the previous tenancy at the landlords other building that there is a pattern of complaints from this tenant regarding drug use and toxic chemicals to cover up the smell of drugs used by other tenants. The tenant has been repeatedly warned about disturbances caused by him in

his actions of dealing with other tenants and I find this action by the tenant is both unwarranted and has caused significant disturbances to other tenants.

The landlord has an obligation to protect the right to quiet enjoyment of all tenants and when this tenant has taken this unwarranted action against other tenants then the landlord has reason to end the tenancy.

I am not persuaded by the tenant's evidence in the form of his doctor's letters describing his hospitalization as the doctor's comments are based on information provided to her by the tenant and not as directly witnessed by the doctor. Furthermore, in these letters the doctor writes that the tenant has created the disturbances as claimed by the landlord. The tenant has provided insufficient evidence to show that there are toxic fumes coming into his unit from the tenant's unit below and I am satisfied from the landlord's description of the air flow system in the building that would prevent this from occurring. If the tenant has experienced health issues due to toxic fumes there is no definitive proof that these are caused by fumes from the building and not some other source or a previous health condition.

I find therefore that the tenant's application to dispute the Notice is dismissed.

S. 55(1) of the *Act* provides that:

**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.*

I find the landlord's Notice to End Tenancy does comply with s. 52 of the *Act* and the landlord requested that I issue an Order of Possession for the rental unit for the end of August, 2016. The effective date of the One Month Notice is July 31, 2016; and this date

has since passed. As I have dismissed the tenant's application I therefore issue an Order of Possession to the landlord as requested for August 31, 2016.

### Conclusion

The tenant's application is dismissed without leave to re-apply.

As the tenant's application has been dismissed the tenant must bear the cost of his filing fee.

The landlord has been issued an Order of Possession effective **at 1.00 p.m. on August 31, 2016** pursuant to s. 55(1)(b) of the *Act*. This Order must be served on the tenant. If the tenant remains in Possession of the rental unit and does not relinquish that possession to the landlord then the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: August 17, 2016

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Residential Tenancy Branch