



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SOUTH OKANAGAN BRAIN INJURY SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes          CNC

### Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a One Month Notice to End Tenancy for Cause.

The tenant, an agent for the landlord (LS), a witness for the tenant and an advocate supporting the tenant all attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The parties 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; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issues

The landlord's agent attending the hearing stated that the landlords named on the tenant's application as the landlords are in fact the landlord's agents. The landlord's agent requested that the landlord should be properly identified as the South Okanagan Similkameen Brain Injury Society and not by the landlord's agent's names as submitted by the Tenant. The Tenant has made no objection and I order that the application be amended to reflect the proper identification of the landlord. This has been amended on the style of cause.

### Issue(s) to be Decided

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

### Background and Evidence

The parties agreed that this month to month tenancy started on January 01, 2011. The tenant pays a subsidized rent of \$553.00 per month and this is due on the first of each month.

LS testified that the parties had been through another hearing held on July 06, 2016 after the tenant had been issued with the previous One Month Notice. LS testified that in that decision it was noted that the tenant was cautioned to ensure that she is respectful of her neighbors and refrain from causing any disturbances in and around the unit with loud music or disturbances of another nature. The tenant was also put on notice that any disturbances from her unit may result in her tenancy becoming seriously jeopardized and may result in a further Notice to End Tenancy.

LS testified that on July 29, 2016 the landlord agent SM who is the property manager received a complaint concerning noise from the tenant's home. The complainant was another tenant living on the complex in a unit 30 meters from the tenant's unit. The complainant informed SM that there was screaming, yelling and the sound of household items being thrown coming from the tenant's unit. This complainant was concerned about the safety of the tenant's children.

LS testified that SM called the police and when she arrived at the property the police were in attendance and were walking a male person out of the tenant's unit to talk to him away from the tenant. SM had informed LS that the officer asked this male to leave the complex for three hours and the male then left the scene. LS testified that SM informed her that other tenants living across the street and around the corner from the tenant's unit also stated that they had been disturbed by this noise. LS referred to an email written by the tenant that had contacted SM about the disturbance and so SM followed up with issuing and serving this One Month Notice to End Tenancy for cause (the Notice). The Notice was put on the tenant's door on July 29, 2016 and had an effective date of August 31, 2016. A copy of the Notice has been provided in documentary evidence and provides 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,*
- 2) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*
  - (ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property,*
- 3) The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.*

LS testified that they investigated this latest complaint against the tenant and other tenants, living on the complex, informed LS that the tenant had asked them to write letters to substantiate her claim that she was not involved in this noise disturbance.

LS testified that the tenant has not engaged in any unlawful activities but has disturbed other tenants right to quiet enjoyment of their rental units.

LS testified that after the last hearing she met with the tenant in August, 2016 and spoke about noise concerns and that the tenant was in breach of a material term of her tenancy agreement by continuing to disturb other tenants. LS requested that if the tenant is unsuccessful with her application and the Notice is upheld that an Order of Possession be issued to the landlord with an effective date of October 31, 2016.

The tenant disputed the landlord's claims. The tenant testified that on the day of this complaint the tenant was at home steam cleaning her carpets and cleaning her house. The tenant agreed that she did have an argument with her boyfriend but there were no yelling, screaming or throwing things about. It was just a disagreement that went on for about ten minutes. The person who has made this complaint has made other unfounded complaints and accusations against the tenant. The landlord's manager SM was the person who called the police based solely on this complaint without even hearing if there was any noise from the tenant's unit.

When the police arrived the tenant was still inside her unit cleaning and her boyfriend JN was outside having a cigarette. The police did not hear any noise and did not appear to know why they had been called. The police officer was only there for about five minutes and did not even speak to the tenant. The officer did not tell JN to leave the complex. SM had turned up and was

extremely agitated and was taking photos of JN talking to the officer. The police officer was aware of SM's highly emotional state and asked JN if he would be OK to leave.

The tenant testified that there have been many issues between SM and herself but the tenant did not ask other tenants to write letters for her. This Notice is based on false information and accusations about the tenant. The tenant testified that her social worker has no concerns about the tenant's care of her children and in one letter from one of the landlord's witnesses it states that the tenant is always drinking. The tenant questions this and asks how that person could know this if she does not live with the tenant and it is untrue. Two of the other tenants living on the complex are friends of SM's. JN witnessed SM talking inappropriately to these other tenants about the tenant. SM's conduct is based on her personal vendetta against the tenant and not based on fact and nor is it professional. The tenant testified that she has had to take out a Human Rights case against SM, she has also written to BC Housing and spoken to LS about SM's conduct.

The tenant calls her witness JN. JN testified that he is a close friend of the tenants but does not live in her unit. JN testified that he and the tenant had a five or ten minute disagreement and all the doors and windows were open as the tenant had been steam cleaning her carpets. This disagreement was not heated and there were no yelling, screaming or throwing things. After they resolved their disagreement JN went outside for a cigarette. A little while later a police officer arrived and he was as surprised as JN was as there was nothing wrong at the tenants unit. The officer asked JN to walk across the street with him and then SM pulled up and started screaming and saying do not approach me at JN and was taking photos of him. JN testified that he asked the officer about the nature of the complaint and was told it was about domestic abuse. JN testified that the officer seemed confused but was not worried that there was any domestic abuse taking place and he could see that nothing had been broken.

JN testified that two immediate neighbours including the lady living across the street were sleeping at the time this alleged disturbance took place and they were not even woken up. Had there been any yelling or screaming this would have woken them. SM was the person who called the police yet she had not witnessed anything for herself and had just heard a story from someone else. JN testified that SM has a personal vendetta against the tenant.

The tenant asked JN to give evidence about hearing SM speaking to neighbours about her. JN responded that one day the kitchen window was open and he heard and saw SM talking to two other tenants and could hear her slandering the tenant saying she was afraid to go to the tenant's house and needed to have someone with her. SM has shown a pattern of unprofessional behaviour towards the tenant.

The tenant asked the landlord to explain about false statements made by SM in this incident report and does LS understand how SM conducts herself. LS responded that she has spoken to the tenant on a number of occasions and is aware of her feelings concerning SM. LS testified that the only thing in the incident report that may be wrong is the time the incident took place but she does not believe there are any other things that may be false.

The tenant testified that the landlord said that a tenant living across the road says these disturbances happen often, yet when the tenant spoke to that tenant she was told that that tenant knows that SM does not like her either and she is scared to get involved with SM. That tenant also told the tenant that she was napping and did not hear the alleged disturbance and she only came outside when she saw SM to pay her rent.

The tenant testified that the tenant in unit 139 has written personal judgemental letters against the tenant which are untrue. The tenant referred to the numerous letters from other tenants on the complex in support of the tenant. None of these letters refer to a noise disturbance. The only person the tenant asked to write a letter was a tenant in 124 as this tenant is often bothered by noise and will make complaints about it; however, she willingly wrote a letter saying she did not hear a disturbance.

The landlord testified that their body of evidence confirms the reason given on the Notice.

The tenant testified that the tenant who was in 118 referred to an incident that happened over two years ago and was as a result of domestic dispute. The letter from the tenant in 119 was dealt with at the previous hearing and should not be provided again. The tenant testified that she spoke to that tenant and that tenant wrote a support letter and stated that it was all false and she was scared of losing her tenancy due to SM's intimidation. Her comments written in a

letter to the landlord was her way to protect herself and she has no complaints against the tenant.

### Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

The landlord has the burden of proof and must show that grounds exist to end the tenancy. If the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. It is important to again note here that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The tenant was cautioned at the previous hearing concerning any further noise complaints; however, just because I cautioned the tenant at that hearing does not mean the landlord no longer has to meet the burden of proof regarding any further issues raised as a reason to end this tenancy. The landlord did not ensure SM attends the hearing and simply stated it was her day off. If this matter was important to the landlord and as SM appears to be the person who has direct contact with this tenant and other tenants then I would have thought the importance of her attending the hearing would be paramount. LS has provided hearsay evidence or evidence that she has not directly seen herself or been involved with. I can therefore place little weight on her testimony regarding this latest noise complaint against the tenant.

LS did not ask any of the tenants who provided letters for the landlord regarding the tenant's conduct or noise disturbances to attend the hearing as witnesses to provide first hand testimony under oath or submit to cross examination. The tenant has also provided many letters from neighboring tenants in support of the tenant and addressing the tenant's concerns of false accusation of noise and disturbances on July 29, 2016.

The tenant's witness was present during this disagreement with the tenant and testified that it was not disturbing, there was no yelling, screaming or throwing of objects and the police officer had no concerns of domestic abuse or disturbances. The landlord has not provided a police file

number to determine if any charges or cautions were made. Overall I find the landlord's evidence to be based on hearsay and is insufficient to meet the burden of proof. There is insufficient evidence to show the tenant has not been respectful of her neighbors or caused any disturbances in and around the unit on July 29, 2016. If a tenant has a disagreement with her friend or boyfriend then this kind of thing goes on in many households and can be considered normal living noise and without further corroborating evidence it certainly would not warrant an end to this tenancy. Consequently, I find the tenant's application to cancel the Notice is allowed.

### Conclusion

The tenant's application to cancel the Notice is allowed. The One Month Notice to End Tenancy for Cause dated July 29, 2016 is cancelled and the tenancy will continue.

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: September 26, 2016

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Residential Tenancy Branch