



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAMPBELL RIVER HEAD INJURY SUPPORT SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, AAT, LAT, MT

### Introduction

The tenant applies to cancel a one month Notice to End Tenancy for cause dated August 15, 2016. The Notice claims that the tenant or a person permitted on the premises by him has significantly interfered with or unreasonably disturbed another occupant or the landlord. Such grounds, if proved, are grounds for eviction under s. 47 of the *Residential Tenancy Act*.

The tenant also seeks more time to make his application. However, it is clear that his application was made within the ten day time period prescribed by law and so an extension of time to apply is not required.

The tenant also seeks an order allowing access to or from his rental unit for himself and his guests and an order authorizing a lock change. No evidence was tendered to support either of these claims and so they are dismissed.

Both parties attended the hearing, the landlord by its two representatives, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

The day before this hearing the landlord posted to the tenant's door an envelope containing written materials to be used as evidence at this hearing. The Rules of Procedure require that such material be provided at least seven days before the hearing. As a result, none of the material was permitted to be adduced as evidence unless it had been provided to the tenant at an earlier time and would have been apparent to him to be relevant to the grounds given for the Notice.

Issue(s) to be Decided

Does the relevant evidence presented during this hearing show on a balance of probabilities that the conduct of the tenant or his guests has significantly interfered with or unreasonably disturbed another occupant or the landlord?

Background and Evidence

The rental unit is a one bedroom apartment in a three storey, 12 unit apartment building.

There is a written tenancy agreement though a copy was not provided. The tenancy started April 11, 2012. The current monthly rent is \$600.00. The landlord holds a \$300.00 security deposit.

The landlord's representative Ms. S.H. testifies that on an evening at the end of March 2016 another tenant in the building, Mr. J.H. told her that he felt unsafe because he could hear the tenant in the hallway yelling obscenities and being aggressive. The landlord sent the tenant a letter April 1, 2016 warning him of his conduct. She says that a manager in the building told the tenant to go back into his apartment.

She says that the apartment building is a non-smoking building and that the tenant living across the hall from the applicant tenant, Mr. D.J. has complained that he can smell smoke from the tenant's unit and that he has had to put a strip under his apartment door to prevent smelling the smoke.

She says that in January 2016 the police were called to the building because a guest of the tenant had drunkenly picked a fight with a construction worker hired by the landlord outside the building. She says she sent the tenant a warning letter that he is responsible for the conduct of his guests.

Ms. S.H. says that a tenant of the building living above this tenant left because of the tenant's "verbal abuse" when leaving and entering the building.

The tenant says that he has received no complaints from the landlord. He was unaware of the actions of his friend outside the building. The warning letter he received was a general letter to all tenants saying they were responsible for the conduct of their guests.

He says his tenancy agreement does not prohibit him from smoking in his rental unit. He acknowledges he's received a letter from the landlord addressed to all tenants regarding smoking.

In regard to the noise complaint from the tenant across the hall, he denies that he was in the hall.

### Analysis

The ending of a tenancy is a very serious matter. A landlord will be expected to provide cogent and persuasive evidence to establish cause for eviction.

In this case, the essence of the grounds for cause is that another occupant or the landlord (which includes a workman of the landlord, such as the construction worker) has been “significantly interfered with” or “unreasonably disturbed.”

The landlord has not presented sufficient evidence to permit any preference for the second hand evidence of the landlord’s representative Ms. S.H. concerning cause over that of the tenant’s denials.

The landlord has not presented sufficient evidence from another occupant or any employee or agent of the landlord to state that he or she has been significantly interfered with or unreasonably disturbed. The second hand facts presented permit speculation that if the allegations were true an occupant or the construction worker might have been unreasonably disturbed or significantly interfered with, but speculation is not enough to found an eviction.

For these reasons I find that the landlord has not established good grounds for eviction at this hearing. The Notice must be cancelled.

As stated at hearing, this decision is not a finding of “not guilty.” It merely signifies that the landlord has not satisfactorily proved its claims. The tenant should be warned that if there is some truth to the allegations about his conduct and if that conduct continues, he may find himself the recipient of another Notice.

### Conclusion

The application is allowed. The Notice to End Tenancy dated August 15, 2016 is cancelled.

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: October 19, 2016

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Residential Tenancy Branch

