



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sorrento & District Housing Society  
and [tenant name suppressed to protect privacy]

## DECISION

### Dispute Codes

OPC, FF  
CNC

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession for cause and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end the tenancy for cause.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties each called 2 witnesses who also gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Should the One Month Notice to End Tenancy for Cause be cancelled?

### Background and Evidence

**The landlord's agent** testified that this month-to-month tenancy began on or about January 2, 2012 and the tenant still resides in the rental unit. Rent is subsidized, and the tenant's share is \$446.00 per month, payable on the 1<sup>st</sup> day of each month and there are no rental arrears. The rental unit is 1 of 16 units in an apartment complex. A tenancy agreement exists, but a copy has not been provided for this hearing

The landlord's agent further testified that on February 24, 2017 the tenant was personally served with a One Month Notice to End Tenancy for Cause, a copy of which has been provided for this hearing. It is dated February 24, 2017 and contains an effective date of vacancy of March 31, 2017. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

On February 9, 2017 around 7:00 p.m. the tenant was asked to let a plumber into the furnace room, which he did. The tenant returned to his apartment and re-entered the furnace room sometime later and the plumber asked the tenant to remove a neighbouring tenant from the room because she was bothering the plumber. The tenants began pushing and shoving each other, other residents got involved and police were called. Statements were taken by police, which are not available as evidence for this hearing, and no one was charged.

There has been an on-going issue between the tenant and the neighbouring tenant in the last 2 years; swearing, name-calling and nasty stuff, but it has now become physical. As a result of the altercation in the furnace room, the neighbouring tenant had to have her arm bandaged and another resident also had a bruised fore-arm. Some of the tenants are in their 70s or 80s, and the landlord cannot condone such behavior regardless of who started it. Each of the 16 units is independent-living and the landlord is a voluntary independent board, none of whom live in the complex. BC Housing agrees that a resident manager isn't feasible and the board has to trust residents to get along. Both tenants were served with a One Month Notice to End Tenancy for Cause, and the neighbouring tenant is actively seeking another home.

There have also been other complaints over the years about the tenant becoming belligerent, swearing at other residents from time to time, but is also useful around the complex, clearing snow and assisting. But in the evenings the tenant can get aggressive and other tenants say they feel threatened by him.

**The landlord's first witness** (BS) testified that she is a volunteer financial advisor for the landlord society, and collects rent, completes financial reviews and Minutes of meetings.

The witness testified that the tenant has been causing discontent among other residents. A couple of residents who complained about him said they were afraid of the tenant, and 2 have moved out because of intimidation. A couple of others are looking for other places because they are afraid and others are afraid to leave their apartment.

The board had a discussion and due to an incident in the furnace room, it was decided that both tenants involved in the incident should move out so others can live in safety.

On February 23 or 24, 2017 the witness went to the tenant's rental unit with the landlord's agent and the landlord's agent handed the tenant an envelope which contained a letter marked: Re: Letter of Eviction, along with a One Month Notice to End Tenancy for Cause.

**The landlord's second witness** (LG) testified that in August, 2016 the landlord's agents had a complaint from another resident about the tenant swearing at him in the parking lot. The 2 met

again later and the tenant followed the neighbouring tenant to his apartment and threatened to punch him. Others were afraid to leave their apartments. As a result of the tenant's behaviour, the neighbouring tenant gave notice to end his tenancy, but the landlord's agents convinced him to stay rather than living in a tent in a park in the winter, and he still resides in the rental complex. Those were the facts given to the witness in a letter from the neighbouring tenant and when spoken to by the witness, but the witness has no personal knowledge of the incident.

**The tenant** testified that the incident in the furnace room was not as set out by the landlord's agent. The tenant showed the plumber the leak and left. When the tenant returned a half hour later, and while speaking to him, the neighbouring tenant wanted to enter the furnace room. It's a small room and loud, and the tenant told her to leave but she was pushing on the door. The only words the tenant spoke to the neighbouring tenant were, "Go back to your suite." The tenant let go of the door and left immediately to get a witness. The witness asked the neighbouring tenant what she was doing in there and the neighbouring tenant immediately grabbed her by the wrist, called her a bitch and pushed her out. The neighbouring tenant started screaming that the witness had beat her up and went banging on other neighbours' doors alleging she had been beat up.

The tenant went around the building to return to his apartment rather than down the hallway in order to avoid the neighbouring tenant. The tenant returned to the furnace room again and the plumber told the tenant police had been called. The tenant waited for police who interviewed all parties but there is no police report, only notes of the officer because no one was charged.

The tenant was afraid to leave his apartment, and has also been threatened by a guest of his next door neighbour. The tenant also disagrees with the landlord's version of events in August, 2016 and testified that he was verbally assaulted by the other tenant.

The tenant is 75 years old, weighs about 170 pounds, and is physically fit enough to do work around the complex, but testified that he does not have a temper and does not swear.

**The tenant's first witness (LE)** testified that she is a retired director and president of the landlord society, and was so when the neighbouring tenant from the furnace room incident moved into the rental complex. The witness is well aware that the neighbouring tenant has always interjected herself in anything going on at the rental complex, would never mind her own business or be quiet about anything. The witness talked to her about rudely interrupting the witness' conversation with a maintenance man, and the neighbouring tenant stomped away. The witness also talked to her about interrupting a private meeting in the common room when there were signs on the door saying it was a private meeting, and constantly intrudes in others' affairs.

The neighbouring tenant has told the witness numerous times that the tenant has to move and that she would have the tenant evicted, and has tried to befriend various residents to assist in

that regard. She encouraged 2 other residents, who had a conference with the board all against the tenant alone. The neighbouring tenant has been constantly keeping her dispute with the tenant alive with other residents.

Before the neighbouring tenant moved in, there were no issues with respect to the tenant or his tenancy. He was helpful, minded his own business and didn't disturb others.

The witness was present when police attended in February having been called by a housekeeper who didn't know what number to call. The witness attempted to reach a board member, and attended at the rental complex. Statements were taken by police, and the witness was present for one. The police said that all 3 who witnessed the furnace room incident agreed on what happened and the aggression was on the neighbouring tenant. The witness also provided an Incident Report, which has been included as evidence for this hearing.

**The tenant's second witness** (NE) is another resident in the rental complex, and testified that the tenant had asked her to attend the furnace room, and upon arriving saw the neighbouring tenant and asked what she was doing there. The neighbouring tenant told the witness she was going to break her arm and swore at the witness. The witness' arm was black and blue from being scraped over the rail in the furnace room. , Then the neighbouring tenant accused the witness of beating her up, telling everyone that.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause, and I find that it is in the approved form and contains information required by the *Act*. In this case, the reasons for issuing it are in dispute.

There is no doubt that the tenant and the neighbouring tenant do not like each other. However, the issue is whether or not the landlord has established that the tenant has significantly interfered with or unreasonably disturbed another resident and/or that the tenant has seriously jeopardized the health or safety or lawful right of another.

I have considered all of the testimony of the parties and witnesses, and take specific note that all seem to agree that the neighbouring tenant antagonizes others. The tenant's first witness, who is a retired volunteer for the landlord, testified that the neighbouring tenant has consistently told the witness that she would ensure the tenant would be evicted. The tenant testified that he has taken some strides to avoid the neighbouring tenant. The witness who was in the furnace room testified that she was hurt by the neighbouring tenant.

The testimony I find the most compelling is that of the retired president who witnessed the neighbouring tenant get involved and antagonizing others when the subjects were none of her

business. I found her testimony to be frank, truthful and knowledgeable of many of the circumstances, even after retirement.

In the circumstances, I am not satisfied that the landlord has established that the tenant has disturbed or interfered with other occupants or jeopardized the safety or rights of others. The One Month Notice to End Tenancy for Cause is hereby cancelled and the tenancy continues.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed.

The One Month Notice to End Tenancy for Cause dated February 23, 2017 is hereby cancelled and the tenancy continues.

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: May 31, 2017

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Residential Tenancy Branch