



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNC, OPC

### Introduction

This hearing was convened in response to an application by the Tenant for an order cancelling a notice to end tenancy pursuant to section 47 of the *Residential Tenancy Act* (the “Act”) and an application by the Landlord for an order of possession pursuant to section 55 of the Act.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord’s Witness and the Tenant’s Witness both provided evidence under oath.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Landlord entitled to an order of possession?

### Background and Evidence

The tenancy started on February 1, 2010. Rent of \$985.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$447.50 as a security deposit. On June 13, 2017 the Landlord served the Tenant with a one month notice to end tenancy for cause (the “Notice”) by posting the Notice on the door of the unit. The reason set out on the Notice is that the tenant or person permitted on the property by the tenant has

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- or

- seriously jeopardized the health, safety or lawful right of another occupant or the landlord.

The Notice details one incident on March 24, 2017 where the police were called. The details also note attached letters from other tenants regarding this incident.

The Landlord states that the incident that occurred on March 24, 2017 significantly disturbed other tenants. The Landlord states that one tenant woke up to noise on his patio and a person yelling, screaming and banging. The Landlord states that this tenant provided a witness letter indicating that this tenant was very scared of the person outside his unit. The Landlord states that despite its fear this tenant allowed this person into the unit and let this person out the tenant's unit door to the hallway. The Landlord states that other tenants also provided letters indicating their fear as a result of this incident.

The Landlord states that there have been repeated complaints of noise from the Tenant's unit. The Landlord states that these complaints occurred in May 2011, February 2015 and September 2016. The Landlord states that they have not been able to provide other tenants with quiet enjoyment of their units because of the Tenant's actions and the coming and going of people and the noise. The Landlord states that the Witness statement indicates that people have been coming and going from the unit at all hours with frequent noise, yelling and disruption. The Landlord states that they have no evidence of any "reckless lifestyle" as noted in one of the Witness letters.

The Landlord provides five witness letters of which all contain details of the March 24, 2017 incident. One of these letters is from the tenant who was awoken by a person on his balcony who was then let into the tenant's unit to leave out the door of the unit. There is no mention by this tenant of being fearful of the Tenant or the person on his balcony. Three of the letters mention noise from the unit and general statements of persons being in the unit. One letter noted that the noise was "mentioned a few times" and a second letter notes that noise was "reported several times".

The Landlord's Witness, a police officer, states that the day prior to the incident, the police received a tip that the Tenant was selling street drugs, namely cocaine. The Witness states that no charges have been laid in relation to this tip to date and that the investigation is ongoing.

The Witness states that on the day of the incident, March 24, 2017 the Tenant was a victim of robbery and a "drug rip". The Witness states that suspects were identified, charges have been recommended to crown counsel, and that the matter is currently in the approval stage. The Witness states that the Tenant has been a reluctant witness in the provisions of ongoing details. The Witness states that the Tenant was given a warning to suggest that in order to avoid any further risk of a break-in the Tenant should cease criminal activity. The Witness states that there were multiple witnesses to this incident all of whom face an increased risk of potential retribution by the offenders.

The Landlord states that prior to approximately a week before the hearing the Landlord had no knowledge of what occurred during the incident and only obtained evidence from the police Witness. The Landlord states that no details of this police information were provided to the Tenant in advance of this hearing. The Landlord states that they moved to end the tenancy prior to the police evidence. At this point in the hearing the Tenant was provided with opportunity to adjourn the hearing in order to consider and respond to this new evidence however the Tenant declined.

The Tenant states that he did not allow his assailants into the building and does not know who allowed their entry. The Tenant states that all he heard was a knock on his door and the persons outside told the Tenant that there was a problem with his car. The Tenant states that he was assaulted and beaten badly and was sent to the hospital by the police who attended the scene. The Tenant states that he does not sell street drugs and does not know the assailants. The Tenant states that the assailants were looking for money kept in the Tenant's wall safe and were trying to remove the safe. The Tenant states that he is not reluctant to deal with the police in this matter and that he has fully cooperated with the investigation including attending the police station to give a statement and allowing photos to be take of his naked body. The Tenant states that he also freely gave his laptop to the police and has yet to have it returned. The Tenant states that the police only attended after the incident to inform the Tenant that they received information that someone would harm the Tenant again or would try to harm the Tenant again. The Tenant states that no other details were provided to him. The Tenant states that he is the victim of a vicious assault and is not responsible for the actions of his assailants. The Tenant's Advocate argues that the evidence of drug dealing is only a tip and that the police

warning of future danger is based on assumptions as there have been no charges. The Tenant states that the police had a search warrant and found nothing.

The Tenant's Witness was present on the day of the break-in. The Witness states that the intruders had nylon masks over their faces and had guns. The Witness described being frightened and jumping to the other tenant's balcony to get help. The Witness states that by the time he was let out of the other tenant's unit the assailants were gone.

### Analysis

Section 47 of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia, the tenant or a person permitted on the residential property by the tenant has

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, or
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Although the Notice does not include illegal activity as a reason, I consider the police Witness evidence of drug dealing to be relevant to another possible break-in or continuing danger. I note that that presence of guns in the break-in indicates that any possible additional intrusion would be greatly significant. I give considerable weight to the police evidence of the break-in to be a "drug rip" and their continuing investigation into drug dealing, that the Tenant is reluctant in its dealing with the police and that the police have warned the Tenant of being a target for future violence. I also note the evidence of a wall safe that the intruders apparently targeted.

It is clear that the Tenant did not purposely allow entry of persons who were the cause of the disturbance to the other tenants and I feel great compassion for the outcome of that entry. However given the compelling police evidence taken together with the evidence of a wall safe and letters from the other tenants of noise and persons coming and going to the unit I find on a balance of probabilities that the Tenant has acted in a manner that attracted dangerous intruders and that these actions has seriously jeopardized or is likely to seriously jeopardize the health or safety or a lawful right or interest of the landlord or another occupant. For these

reasons I find that the Notice is valid and that the Landlord is entitled to an order of possession. The Tenant's application is dismissed.

Conclusion

**I grant** an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, 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 31, 2017

---

Residential Tenancy Branch