



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, O, FF

### Introduction

This hearing was convened to deal with an application by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) filed June 9, 2017 seeking “other” unspecified relief and recovery of the application filing fee. The “details” section of the tenant’s application states: “landlord has been difficult and done many things he isn’t allowed legally to do, including not allow my guest on the property, as well as lie on the notice and give me the notice in an unnoticeable spot” (reproduced as written).

At the outset of the hearing the tenant indicated that she was seeking an order cancelling a 1 Month Notice to End Tenancy for Cause dated May 30, 2017 (the “1 Month Notice”). As the landlord confirmed that he understood that the tenant was bringing an application to cancel, I have amended the tenant’s application to reflect that.

The tenant attended, as did the landlord (TC) and the property manager (MG). A relief manager (CM), and three other witnesses (DB, TL, LS) also attended. Both parties full opportunity to be heard, to present affirmed testimony, to make submissions, to present documentary evidence, and to respond to the submissions of the other party.

Service of the tenant’s application and notice of hearing was not at issue. Both parties also acknowledged receipt of the evidence of the other party.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

If not, is the landlord entitled to an order of possession?

Is the tenant entitled to recovery of the application filing fee?

### Background and Evidence

It was agreed that this tenancy began on January 12, 2017. Rent is 850.00 monthly and due on the first of each month. This is a fixed term tenancy expiring January 31, 2018. A security deposit of \$425.00 was paid at the beginning of the tenancy and remains in the landlord’s possession.

The 1 Month Notice was served on the tenant personally on June 5, 2017, and the tenant applied to dispute it within the applicable time limit. It has an effective date of June 30, 2017. The tenant has paid rent for August.

The 1 Month Notice indicates that the tenant or a person permitted on the property by the tenant has "significantly interfered with or unreasonably disturbed another occupant or the landlord." It also indicates that the tenant or a person permitted on the property by the tenant has engaged in illegal activity which has put the landlord's property at significant risk. The landlord's concentrated on the first allegation although it had included photographic evidence regarding the second.

The landlord's concerns are largely with the tenant's boyfriend, JM. The landlord stated that although until recently the tenant has represented JM as a guest rather than an occupant, JM resides in the rental unit. The landlord said that the tenant recently paid an additional \$100.00 in rent, ostensibly to cover JM as an additional occupant, but at that point the landlord advised the tenant that the tenancy agreement requires the landlord's written permission for the additional occupant as well as the \$100.00 fee, and that the landlord would not consent to JM's occupancy. The tenant subsequently deducted this amount from her next rental payment.

The landlord, TC, said that in March while performing his early morning inspection of the building he came across JM on his bike at the top of a stairwell with drug paraphernalia (foils). Another tenant, TL, claims to have witnessed JM using drugs (a pipe) at the back of the building in a secluded spot. TL testified at the hearing to this effect and an email dated May 23 from him to the landlord was also in evidence.

The landlord also stated that in March, April, and May there was a lot of activity on the tenant's balcony. It was barricaded up with cardboard and wood, and was being used as a workshop. A photograph from the landlord of the balcony at this stage was in evidence, as was a letter to the tenant dated March 31 about the "timber frame and attached lattice work." Bicycles were also hung over the balcony rails, and the tenant was cautioned about this. Letters to the tenant about the bicycles dated April 10 (regarding "two bicycles hanging over the railing of your balcony") and May 25 (regarding "bicycles on your deck in various stages of repair") were also in evidence.

The tenant submitted photographs of bicycles on various other balconies to suggest that the landlord was discriminating against her by issuing these notices. One of the photographs was of hanging bicycles, but it was not clear which unit they belonged to.

The landlord further stated that there have been two complaints about noise from this rental unit from DV, another tenant in the building. DV's letters were in evidence and he also testified at the hearing. He stated that in May between 10:00 and 11:30 there was loud banging from the rental unit and a large spot light was shining into his bedroom window and that there was some sort of bicycle repair being conducted on the tenant's balcony. Another letter dated June 19, 2017 from DV and his co-tenant was in evidence, complaining about slamming of the hallway doors, loud arguments, and the sounds of bicycle repair after 10:00 pm from the unit in question.

DV also testified that on July 17, 2017, he observed a lit cigarette tossed off the balcony of the rental unit in question and that he went down to extinguish it because he was aware it was a fire hazard. He also said that at some point in July he also heard the sound of chop saw coming from the tenant's unit.

A letter from the landlord to the applicant tenant dated May 24 was also in evidence. In that letter the landlord cautions the tenant about the May noise complaint and also raises the fact that the unauthorized additional occupant, JM, has been witnessed using drugs. The landlord suggests that JM should not be in the building and that if he continues to reside there the landlord will issue a 1 Month Notice to End Tenancy.

The tenant testified that she had not received this warning letter and that if she had been aware that neighbours were being disrupted then she would have kept the noise down. The landlord in response had the relief manager testify to confirm TC's evidence that the caution letters were posted on the tenant's door.

TC also testified that on May 31 and June 22 he attempted to do suite inspections after notice to the tenant and that the tenant would not allow these on either occasion.

Lastly, MG stated that the landlord has been dealing with issues with their insurer after an inspection as a result of the bicycles and the burning cigarette.

As set out above, the tenant testified that she did not receive any of the warning letters. She also stated that JM would not be using drugs in the common areas and that he has told her that he has not been doing so. The tenant questioned what the witness meant when he said that he was JM with a "drug kit." The tenant further stated that she supposed this dispute would boil down to a matter of "he said, she said."

As also set out above, the tenant submitted photographs of bicycles kept on other balconies. The landlord in response said that none of the other units have bicycles

hanging off of their balconies. It was difficult to tell from the tenant's photographs whether this was true, because it was not clear whether the one photograph of hanging bicycles was of the tenant's unit or another unit, but the tenant did not contradict the landlord here.

In written submissions the tenant sets out an account of the landlord's entries or attempted entries into the rental unit since May 31, 2017. In those submissions the tenant also acknowledges that she did receive written notice of various issues on her door, and says only that the landlord's May 24 letter regarding the noise complaint was left in her mailbox, which she does not check often. The tenant alleges that TC is abusing his position as well as her privacy rights.

#### Analysis

Section 47(1)(d)(i) of the Act allows a landlord to end a tenancy for cause where the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

Based on the landlord's oral and documentary evidence, most of which the tenant did not dispute, I accept that the tenant or a person permitted on the property by the tenant has unreasonably disrupted another occupant. Most significantly, I conclude that the tenant and/or the other occupant in the suite have disrupted other tenants late at night with the noise associated with their bicycle repair work. Although a landlord is required to establish that there was cause to end the tenancy when the 1 Month Notice was issued, evidence of what has occurred since then is relevant where it represents a continuation of similar conduct. Here, the evidence suggests that the tenant and/or the other occupant have continued to be disruptively noisy.

Regardless of whether the landlord's warning letter about noise was left in the tenant's mailbox or posted on her door, the landlord can reasonably expect that the tenant will receive it. I also note that the noise complaints have continued even after service of the 1 Month Notice, so the tenant's suggestion that she would have kept the noise down if she had received the May 24 warning letter in a timely way is not convincing.

Neither the landlord nor other tenants should have to witness drug use in the common areas of the building. And dropping a burning cigarette from a balcony also qualifies as substantially disruptive, especially in light of the weather this summer and the current fire hazard ratings. The tenant is also required to cooperate with the landlord where the landlord has given proper notice of inspection, and I find that the tenant's refusal to allow the landlord to conduct its annual inspection was not appropriate.

Lastly, the tenant's failure to obtain written authorization and to pay the additional charge for the additional occupant represents an interference with the landlord's ability to carry on business and to meet its own obligations to tenants and occupants under the Act, regulation, and tenancy agreement.

Section 55 of the Act requires me to issue an order of possession where the landlord's notice to end tenancy is upheld, provided it complies with s. 52 of the Act. I find that it complies with s. 52. As the tenant has paid rent for August, I issue an order of possession for the landlord effective at **1:00 pm on August 31, 2017.**

#### Conclusion

The tenant's application to cancel the 1 Month Notice is dismissed. The 1 Month Notice is upheld. I issue an order of possession in favour of the landlord effective at **1:00 pm on August 31, 2017.**

As the application was not successful the tenant will not recover the application filing fee.

The tenant must be served with this order as soon as possible. Should the tenant or anyone on the premises fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

The landlord is reminded of the restrictions set out in s. 29 of the Act on the landlord's right of entry and, specifically, that written notice of entry must set out the purpose for entering the rental unit as well as the proposed date and time of entry.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: August 15, 2017

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Residential Tenancy Branch