



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47.

The landlord and the tenant (the Tenant) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The Tenant testified that they personally served the landlord with the Tenant's Application for Dispute Resolution (Application) on June 15, 2017. The landlord confirmed that they received the Application on this date. In accordance with section 89 of the *Act*, I find the landlord was duly served with the tenant's Application on June 15, 2017.

The Tenant confirmed that they received the One Month Notice. In accordance with section 88 of the *Act*, I find the tenant was duly served with the One Month Notice.

The Tenant stated that they tried to serve their evidence to the landlord on the morning of the hearing, August 16, 2017, but that the landlord did not accept the evidence on the grounds that it was late. Rule 3.14 of the Residential Tenancy Branch Rules of Procedure states that documentary evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that the Tenant did not serve the landlord with their evidence in accordance with Rule 3.14 and that the landlord may be prejudiced by this late service as they did not have a chance to respond to the Tenant's evidence. For this reason the Tenant's evidence is not accepted for consideration.

The landlord testified that they served the Tenant with their evidence by posting it on the door of the rental unit on August 02, 2017. The Tenant confirmed that they received this evidence. In accordance with section 88 of the *Act*, I find the Tenant was duly served with the landlord's evidence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the One Month Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, including witness letters and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord did not dispute the Tenant's sworn testimony that he commenced this tenancy in or about 2003, with a current monthly rent of \$667.90, due on the first day of the month. The landlord currently retains a security deposit of \$347.50 in trust.

A copy of the landlord's June 05, 2017 One Month Notice was entered into evidence. In the One Month Notice, requiring the Tenant to end this tenancy by July 05, 2017, the landlord cited the following reasons for the issuance of the One Month Notice:

*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;*
- *put the landlord's property at significant risk.*

*Tenant has engaged in illegal activity that has, or is likely to:*

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*

*Tenant has caused extraordinary damage to the unit/site or property/park.*

The landlord entered into written evidence letters from two of the tenants who live in the same building as the rental unit in question and one letter from a guest of one of these tenants. The content of these letters mentioned loud music coming from the tenant's

rental unit as well as the Tenant shouting loudly from their unit and verbal threats from the Tenant directed to other tenants in the building.

The landlord also entered into evidence six images of damaged walls.

The landlord testified that the Tenant has threatened the landlord and other tenants with a butterfly knife stating that he would kill them. The landlord also testified that the Tenant had threatened the landlord when the landlord was in a restaurant with their children.

The landlord testified that the Tenant blasts music, throws things around the unit, screams and swears at "the top of his lungs" in the middle of the night in the rental unit and sometimes comes out into the hallway to scream and swear.

The landlord testified that on or around June 03, 2017, the fire alarm was activated in the building. The landlord gave undisputed sworn testimony that the Tenant initially denied the responding firefighters entry into the rental unit although the firefighters had suspected that the smoke which activated the fire alarm came from the Tenant's rental unit. The landlord then posted a written notice for entry and entered the unit with police escort for an inspection. It was at that time the pictures of the damage to the walls were taken by the landlord. The landlord testified that there are over 20 damaged holes in the walls and gave undisputed sworn testimony that some of these holes are bigger than 30 cm by 15 cm in size.

The Tenant testified that they do not own a butterfly knife, they have a bali comb which looks like a butterfly knife. The Tenant testified that they keep the bali comb in their apartment other than when they go to the beach.

The Tenant testified that they were handcuffed by the police, who asked him if he was threatening the landlord. The police then told the Tenant to stay away from the landlord. The Tenant testified that they have been stopped numerous times by the police when walking in town with the bali comb.

The Tenant testified that they only scream at other tenants to keep their music down.

The Tenant admitted that they have punched holes in the walls over the 15 years of the tenancy and that their son and wife also caused damage when they lived with the Tenant.

The landlord responded to the Tenant's testimony and stated that whenever the Tenant has made a complaint, the landlord has investigated but has never found just cause for the Tenant's complaints regarding loud music coming from other units. The landlord states that they have talked to the Tenant about their behaviour.

The Tenant disputed this fact and testified that the landlord has never spoken to the Tenant about the Tenant's behaviour.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy if the tenant or a person permitted on the property causes extraordinary damage to the rental unit.

I have reviewed all documentary evidence and I find that the damage caused by the Tenant is undisputed. The Tenant has admitted to either causing the damage themselves or their spouse and son having caused the damage. I find that the extent of the damage to the walls, specifically regarding the number of holes and the size of the holes, is beyond reasonable wear and tear and therefore is extraordinary damage.

Section 47 of the *Act* allows a landlord to end a tenancy if the tenant unreasonably disturbs another occupant or the landlord.

Based on the undisputed testimony provided in the three witness letters from two tenants in the building and one of their guests, the testimony of the landlord as well as the testimony of the Tenant in question I find that, based on the balance of probabilities, the Tenant has been significantly interfering with the landlord and the other tenants which has at times resulted in the involvement of the police. I further find that this behaviour is unreasonably disturbing the landlord and the other tenants in the building.

I find the landlord had sufficient grounds to issue the One Month Notice and to end this tenancy for cause. For this reason the Tenant's application to set aside the One Month Notice is dismissed.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession. The landlord has testified that a shelter payment has been made on behalf of the tenant to remain in the rental unit for the period from August 01, 2017 to August 31, 2017.

For these reasons, I grant an Order of Possession to the landlord effective on August 31, 2017

Conclusion

I dismiss the tenant's application to cancel the landlord's One Month Notice.

I grant an Order of Possession to the landlord **to take effect by 1:00 p.m. on August 31, 2017, after service of this Order** on the tenant. 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.

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 21, 2017

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Residential Tenancy Branch