



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Westridge Landing Centre  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC FF

### Introduction

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

- cancellation of the landlord's 1 Month Notice (the Notice) to End Tenancy for Cause pursuant to section 47; and,
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both sides were represented at the hearing. All parties provided affirmed testimony and were given a full opportunity to be heard, to present evidence and to make submissions.

The Tenant served the Landlord with his application package on September 8, 2017, and the Landlord acknowledged receipt of this package.

The Landlord served the Tenant with 64 pages of evidence, along with a CD and a USB with audio/video recordings. The Tenant acknowledged receipt of this package on October 16, 2017.

The Tenant testified that he hand delivered the following evidence packages to someone he thought worked for the Landlord:

- 7 pages on October 16, 2017
- 10 pages on October 17, 2017
- 7 pages on October 18, 2017
- 5 pages on October 19, 2017

The Landlord acknowledged that they eventually got the documents the Tenant submitted in the list above, but they were given to someone who does not even work for the company. The Landlord took issue with how they were served and the timing of this service because it impacted their ability to respond to the Tenant's multiple packages.

In consideration of the above service of evidence, I turn to the Residential Tenancy Branch Rule of Procedure 3.14, which requires that evidence to be relied upon at a hearing must be received by the Residential Tenancy Branch and the respondent not less than 14 days before the hearing. Since this is the Tenant's application, the respondent would need to have received his evidence by October 12, 2017. All 4 of the Tenant's evidence packages listed above were provided late and will not be considered in this hearing. The only evidence from the Tenant that will be considered in this hearing is anything he included with his original application package on September 8, 2017, and any oral testimony he provided.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the tenant entitled to have the landlord's 1-Month Notice to End Tenancy for Cause cancelled?
  - If not, is the landlord entitled to an Order of Possession?
- Is the tenant entitled to recover the filing fee for this application from the landlord?

#### Background and Evidence

The landlord issued the Notice for the following reasons:

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.

And, that the Tenant or a person permitted on the property by the 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.

In the hearing, the Landlord testified that the Tenant is noisy and has caused many other occupants in the building to be unreasonably disturbed. The Landlord further testified that the Tenant is often home late, due to the hours he works, and when he comes home (sometimes at 1-3 am), he turns his music up very loud. The Landlord stated that this has been happening for many months now and the Tenant has been warned on numerous occasions.

The Landlord stated that there are 14 other tenants in the building who have complained about the loud music and noise late at night. The landlord provided letters which detail the loud music and disturbances which are coming from the Tenant's unit, on numerous occasions. The Landlord also pointed to the report from an external security company, which indicates that they had to attend the rental unit due to complaints from other occupants about loud noise and music at 2:15 am.

The Tenant testified that he has been renting the unit for over 2 years. He stated that he spends very little time in the unit, and works long hours. The Tenant testified that "some people use music for stress relief" and that he should be allowed to listen to music at a reasonable level. The Tenant stated that the walls are thin and he can sometimes hear the people next door, as well. The Tenant stated that he isn't liked in the building and that management is unfairly targeting him. The Tenant further stated that he doesn't spend enough time at home to disrupt anyone.

The Landlord asked me to consider and rely upon the 64 pages of letter, complaints, warnings, and correspondence regarding the ongoing noise disturbances coming from his unit at all hours of the day.

### Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid.

Although the Landlord issued the Notice for several reasons, I turn to the following ground, given that it is the ground that most of his evidence relates to:

The Tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord.

Although the Tenant submitted documentary evidence to support his case, it was submitted late, and was not considered, as specified in the introduction of this decision. As such, I turn to the oral testimony from the Tenant. He stated that he is being unfairly targeted by management because they don't like him. He also says that there is lots of noise transfer in the building so that may be partly to blame for anything his neighbours hear. I acknowledge the Tenant's testimony on this matter. However, given the preponderance of evidence from the Landlord supporting that the Tenant has repeatedly disturbed multiple other occupants in the building, I find the Landlord has sufficient cause to issue the Notice. I find the Landlord has sufficiently demonstrated that the Tenant has significantly interfered with or unreasonably disturbed several other occupants in the building. The Tenant's application to cancel the Notice is dismissed. The tenancy is ending, under the Notice, as described below.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession.

I find that the Notice complies with the requirements of form and content. The landlord is entitled to an order of possession, based on the effective date of the Notice. I note that the Landlord listed the effective date as October 7, 2017. However, Section 47 and 53 of the *Act* states the following with regards to effective dates:

### **Incorrect effective dates automatically changed**

- 53** (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

Further, I turn to section 47 of the *Act*:

### **Landlord's notice: cause**

- 47** (2) A notice under this section must end the tenancy effective on a date that is:

- (a) not earlier than one month after the date the notice is received, and

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the above, and considering that rent is due on the 1<sup>st</sup> of each month (as per the tenancy agreement provided by the Landlord), I find that the incorrect effective date of October 7, 2017, is automatically changed under the *Act* to October 31, 2017.

As the tenant was not successful with his application, I dismiss his claim to recover the cost of the filing fee.

### Conclusion

The Tenant's application to cancel the 1-Month Notice to End Tenancy for Cause is dismissed. Further, I dismiss the tenant's request to recover the cost of the filing fee.

The landlord is granted an order of possession effective **October 31, 2017, at 1pm**, after service on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: October 27, 2017

---

Residential Tenancy Branch