



# 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 for cancellation of the landlords' One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47 of the *Residential Tenancy Act* ("the *Act*").

The landlord's site manager, the site manager's assistant, the tenant and the tenant's witness 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 landlord's site manager (the landlord) stated that they would be the primary speaker on behalf of the landlord. The witness was with the tenant and instructed to leave the room until called upon to testify by the tenant.

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and evidence which was left under the office door on or about November 09, 2017. In accordance with section 71 of the *Act*, which allows an arbitrator to find that documents are served when not served in accordance with section 88 or 89 of the *Act*, I find the landlord was duly served with the Application and the tenant's evidence.

The landlord testified that they served the tenant with their evidence by way of registered mail on January 05, 2018. 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.

The tenant confirmed that they received the One Month Notice which was personally to them on October 30, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the One Month Notice.

On November 20, 2017, the tenant submitted an Amendment to an Application for Dispute Resolution (Amendment) to request a monetary amount for bedbugs and hot water issues.

*Residential Tenancy Branch Rules of Procedure*, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the

Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

I find that the tenant's Amendment for a monetary claim is not related to the dispute of the One Month Notice and I dismiss it, with leave to reapply.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord provided written evidence that this tenancy commenced on June 01, 2012, with a current monthly rent in the amount of \$906.00, due on the first day of each month. The landlord testified that they currently retain a security deposit in the amount of \$415.00.

A copy of the signed October 30, 2017, One Month Notice was entered into evidence by the landlord. In the One Month Notice, requiring the tenant to end this tenancy by November 30, 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.*

The landlord also provided into evidence:

- copies of 10 separate Caution Notices given to the tenant from August 24, 2015, until the most recent incidents of October 06, 2017, which caution the tenant about yelling at people from his balcony, yelling in his rental unit at late hours, yelling in the corridor, using vulgar language loudly and being aggressive with other tenants;
- a witness letter from an occupant in the building regarding events that occurred on October 06, 2017, where the tenant called out profanities from his balcony directed at the occupant and a few other women he was talking to;
- a witness letter from a different occupant in the building regarding the incident on October 06, 2017, stating that the tenant yelled female oriented profanities and threats such as "kill her" when she got out of her car and walked past his balcony. The occupant stated that she could still hear the tenant from her rental unit continuing to yell

profanities. The occupant goes on to state that the tenant was exhibiting the same behaviour the previous day when she arrived home which leads her to believe the tenant was directing his profanities and threats at her. The occupant states that the manager went to talk to the tenant and the occupant could hear the tenant being aggressive and using threatening words with profanity towards the manager. The occupant states that she is fearful of the tenant;

- a witness letter from a different occupant in the building regarding the incident of October 06, 2017, stating that the tenant directed profanities towards her and the women she was talking to and came down from his balcony and approached the occupant, yelling in an aggressive manner with clenched fists.
- a witness letter from a different occupant regarding the tenant's behaviour, yelling from his balcony at people in his underwear, screaming, crying and swearing "at all hours of the day and night" and waking up her daughter in the middle of the night yelling that he was going to get a gun and blow his brains out everywhere. The letter also refers to an incident where the tenant let himself into the occupant's apartment without knocking and that her neighbour recorded the incident where the tenant knocked on the door of the rental unit, the daughter answered and there was a short exchange. The witness letter then states that the tenant left and then came back and let himself into the occupant's rental unit without knocking on the door when he knew that the occupant was not there. The occupant states that her daughter was playing a game and did not hear him come into the unit. The occupant goes on to state that when her daughter realized the tenant was there, he called her mean and the tenant mocked her daughter with barking noises as well as mimicking the sounds her daughter makes due to Tourette's Syndrome;
- a copy of a piece of paper with seven different police file numbers from incidents with the tenant;
- A witness letter from the manager of a different building that is located near the tenant's balcony stating that they have received notices to vacate rental units from their occupants due to the tenant going on tirades that last most of the day and sometimes half the night. The letter goes on to state that their occupants cannot enjoy their own balconies due to the tenant haranguing and cursing at other occupants in the tenant's building at the top of his voice.

In addition to providing copies of the two most recent caution notices provided to him from the landlord that the tenant has written a profanity on it to dispute their contents, the tenant has also provided in evidence:

- a document that six other occupants of the building signed in support of the tenant that he has not been abusive to anyone or unreasonable disturbed other occupants and is just a loud talker; and
- a witness letter from a different occupant stating that the tenant is generous and loud but not threatening or scary.

The landlord testified that the tenant is very loud and when asked to be quiet gets very aggressive. The landlord submitted that the tenant uses foul language loudly from his balcony and that they have had complaints from the manager of another building that the tenant is disturbing the occupants of that building's quiet enjoyment. The tenant stated that the police have been called many times due to various incidents with the police due to noise issues and the tenant yelling at other occupants from his balcony. The landlord stated that the tenant went into the assistant site manager's unit without permission and invited the assistant site manager to provide her own testimony about that incident.

The assistant site manager stated that she lives across the hall from the tenant and provided testimony that there is a recording of him entering her unit without permission when she was not home and talking to her daughter, making mocking noises towards her.

The landlord stated that in the most recent incident the tenant was yelling at people from his balcony, directing profanities at them and when told to stop he came out of his rental unit and went after two people with his fists clenched in an aggressive manner and that the police were called due to the tenant's behaviour. The landlord testified that incidents of the tenant aggressively yelling from his balcony have been almost a daily occurrence and has been getting worse, culminating in the most recent incident of October 06, 2017.

The tenant stated that the door to the assistant site manager's rental unit was open and that the daughter invited him in as he wanted to give a treat to their dog. The tenant testified that he did not treat the daughter badly.

The tenant submitted that he did not have clenched fists when approaching the other occupants on October 06, 2017 and that he did not go near them. The tenant stated that the police did not come to his rental unit to talk to him about this incident.

The tenant testified that he does not go out on the balcony in his underwear, only boxer shorts, which the tenant feels is reasonable. The tenant stated that he suffers from Bi-Polar disorder and other ailments. The tenant maintained that he is kind to everyone and just generally a loud person. The tenant referred to the evidence that he provided that other occupants signed in support of the tenant to stay in the building.

The tenant then called in his witness who testified that he has not witnessed the tenant being violent and recalled an incident where the tenant was threatened by a different occupant and remained calm. The witness stated that he lives in a rental unit under the tenant and that he only hears footprints from the tenant, no other loud noises.

The tenant concluded with a statement that he generally talks loud and means no harm to others.

### Analysis

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice. As the tenant disputed this notice on November 06, 2017, and since I have found that the One Month Notice was served to the tenant on October 30, 2017, I find the tenant has applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*.

I find that section 47 of the *Act* allows for a landlord to end a tenancy if a tenant unreasonably disturbs other occupants or the landlord and that the landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice.

I have reviewed all documentary evidence. Based on the landlord's written evidence and affirmed testimony of all parties, as well as the balance of probabilities, I find that the tenant has unreasonably disturbed the landlord and other occupants in the building where the rental unit is located.

I find that the witness letters from multiple occupants in the building are consistent in the details of what occurred on October 06, 2017. I find that multiple witness statements have referred to the tenant acting in an aggressive, threatening manner towards other occupants and directing profanities at them from his balcony and then in a common area outside of the building. I find that there are multiple caution notices that refer to similar behaviour of the tenant being loud and yelling at other occupants in a threatening manner from his balcony but that this most recent incident caused some other occupants to be more fearful of his actions then before as he came out of his rental unit to confront them.

I find that the letter from the manager of the other building is consistent with the complaints of the occupants in the building where the rental unit is located regarding the tenant yelling at people from his balcony and unreasonably disturbing other occupants when they pass by the balcony of his rental unit.

I find the landlord has 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 if notice complies with section 52 of the *Act*. I

find that the One Month Notice complies with section 52 of the *Act*. For these reasons, I grant a two day Order of Possession to the landlord.

Conclusion

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

I grant an Order of Possession to the landlord **effective two days after service of this Order** on the tenant. Should the tenant(s) 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: January 29, 2018

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Residential Tenancy Branch