



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ST JOHN'S COURT SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for an Order of Possession for Cause pursuant to section 55 and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant acknowledged receipt of the landlord's Application for Dispute Resolution ("ADR"). The ADR was sent by registered mail. The tenant signed for the registered mailing on September 18, 2017. The landlord confirmed receipt of materials submitted by the tenant as evidence at this hearing.

The landlord testified that he served the tenant with a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") registered mail on September 11, 2017. He testified that, to ensure the tenant received the mail he also supplied a copy to the tenant in person on September 11, 2017. Based on the landlord's testimony, the support of his documentary evidence to prove the registered mailing and the tenant's confirmation of receipt of the 1 Month Notice, I find that the tenant was served with the 1 Month Notice in accordance with the requirements of the Act.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

This tenancy began over 7 years ago as a month to month tenancy. The tenant continues to reside in the rental unit. The landlord sought to end this tenancy testifying that, during the course of this tenancy, particularly the last two years the tenant has been very disruptive to the other tenants/occupants of the residential premises around him. The landlord testified that he has spoken to the tenant regarding these issues, provided warning letters and attempted to address the issues in meetings with the tenant.

The landlord testified that the most recent incident at the residential premises involving the tenant was that he was found unconscious in the laundry room one of the tenant's caregivers. He testified that, at this point in his dealings with complaints about the tenant, he has told the other occupants to call 9-1-1 emergency services with respect to any serious issues that arise.

The landlord testified that, on one occasion in April 2017, the tenant left water on in his rental unit which resulted in a flood and damage to the residential premises. The landlord testified that the tenant was provided a warning letter on this date, as well. The landlord submitted a copy of all the warning letters provided to the tenant as well as complaint letters from other occupants/tenants in the building. The dates of the letters are; May 10, 2017; July 24, 2017; and September 11, 2017. Each warning letter was sent via registered mail and indicated that failure to address the issues (noise, allowing people access to the residential premises and continuance of the behaviour after the first warning and second meeting) raised in the letters may result in the landlord's issuance of a notice to end tenancy.

After several unsuccessful in-person meetings with the tenant and continued complaints from the other occupants of the premises, the landlord issued a 1 Month Notice to End Tenancy for Cause on September 11, 2017 relying on the following grounds,

*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.*

The landlord testified that he believes the tenant or his guests are involved in drug

activity. He testified that the tenant has been warned on several occasions about the responsibility of residents to ensure the safety and security of the building. He testified that he has heard complaints and witnessed surveillance showing the tenant or his guests opening emergency doors within the residential premises. The landlord testified that he receives almost constant noise complaints about the tenant. The landlord testified that, at times, the tenant restricts his neighbours' access to their own rental units with guests in the hallways and, very often, items the tenant collects and keeps in the hall (including broken bicycles that he repairs).

Witness AM testified that she is on the same floor and in a nearby suite to the tenant's rental unit. She corroborated the landlord's testimony that the tenant's actions resulted in a flood at the residential property. She testified that, on one occasion, she opened her door to find a very "excited" man with all of his belongings sleeping outside the door. She testified that the tenant was aware of the man outside her door – that he told her, in front of the person sitting in the hall, that the man was "mental" and was not staying with him any longer.

Witness AM also testified that the tenant fixes bikes that he finds. She testified that the tenant leaves the bikes in the hallway and stores them in the boiler room. She testified that, at times, the access to her unit can be temporarily blocked by bicycles the tenant has brought into the premises. Witness AM testified that she worries about the safety of the building with the tenant and his guests inside it. She testified that she always has a sense of unease near his unit and that she generally feels unsafe in her home.

Witness CG testified that she shares a wall with the tenant. She testified that she is constantly bothered by "banging and chaos" from the tenant's bedroom wall. She testified that she once banged on the wall to get him to quiet down late at night. She testified that the next morning, the tenant banged on her door very loudly and left a note stating she was a "pain in the ass". Witness CG testified that she feels threatened by the tenant and that she doesn't even sleep in her bedroom as a result of all of his noise: she sleeps on her living room couch.

The tenant testified that the issues raised by the landlord and his witnesses are in the past and have been exaggerated. He testified that his sink overflowed on one occasion because he had been up for 3 days straight and he fell asleep standing up. He denied ever being unconscious in the laundry room. He testified that witness AM is a busybody who dislikes him and has been making fictional complaints for years.

The tenant testified that the building is an old wooden building and that it makes a lot of noise on its own. He believes some of the noise that his neighbours hear and blame him for is simply the noises of the building – water pipes and things like that. The tenant testified that, on one occasion he did cause a loud noise in the early morning because he was sick, he was trying to get to the washroom and he fell over, knocking over a lamp. He testified that the noises in his bedroom are “just normal bedroom noises”. He also testified that, quite regularly, he allows people to stay with him because he is an outreach worker – he allows people who are homeless and have no place else to go to stay for “a few nights” – but that they are all friends. He believes that the landlords’ witnesses are both very judgemental about his guests simply based on what they wear and how they look. He acknowledged that, on at least one occasion, his friends opened the fire door - he reminded them not to do so.

The tenant acknowledges receiving warning letters from the landlord. He also acknowledged having meetings with several members of the board for the landlord. The tenant testified that the sounds of music and spring cleaning and an old building have been put on him in an attempt to get him out of the building. The tenant denied any knowledge of the complaints by other residents in the building, even though other complaints from other occupants had been submitted as evidence by the landlord. The tenant also submitted that he has not had any recent complaints against him.

### Analysis

I find that the landlord has not proven that the tenant has put the landlord’s property at risk or seriously jeopardized the health or safety or lawful right of another occupant or the landlord. I find that the flood as a result of water left running was an isolated incident and, as stated by the tenant, there have not been similar issues since. The majority of the complaints about the tenant’s behaviour do not demonstrate that the other occupants’ or the landlord’s health, safety or lawful right has been seriously jeopardized by the tenant’s actions. However, I accept the landlord’s testimony at this hearing and the supporting evidence that the tenant’s behaviour in his rental unit and on the residential premises have caused the other residents significant interference with and unreasonable disturbance.

I accept the landlord’s evidence, in warning letters, telephone discussions and board attended meetings that the landlord has expressed their concern about the tenant’s behaviour to the tenant clearly and further that he has not made changes sufficient to address these complaints. The tenant’s response to the evidence of the landlord is that

there have been no recent complaints or poor behaviour by the tenant or his guests. However, I note that the testimony of the landlord, the documentary evidence of the landlord as well as the corroborating testimony of the two neighbour witnesses suggest otherwise. While it is likely that the tenant has been making efforts to improve, those efforts have not been sufficient based on the evidence before me.

I accept the testimony of the two witnesses who testified on the landlord's behalf. Witness CG's testimony was aligned with her original complaint notes submitted to the landlord. She spoke candidly even though some of the subject matter and the tenant's response seemed to make her uncomfortable. Witness AM's testimony shows a longstanding animosity between herself and the tenant however that is not meant to suggest that her testimony was not truthful or believable – it simply reflects the length of time that Witness AM has been at odds with her neighbour, the tenant.

The landlord submitted documentation in the form of warning letters on 3 different dates as well as correspondence regarding meeting with the tenant to discuss ways to address the complaints of his neighbours on more than one occasion. Those letters spanned over 4 months prior to the landlord's issuance of a 1 Month Notice to End Tenancy on September 11, 2017. The landlord and his witnesses described ongoing issues with the tenant for several years, with short periods of improvement.

I find that the landlord took steps to resolve these complaints and address the tenant's behaviour (the areas of complaint) without the necessity of a notice to end tenancy and then issued a notice to end tenancy only all other avenues had been unsuccessful. At this hearing, the tenant denied some of the allegations made in the landlord's application but mostly the tenant minimized or explained the reasons for his noise, his guests or other circumstances that have caused his neighbours what I find to be an unreasonable disturbance.

Based on the landlord's evidence, supported by the witness testimony and documentary evidence submitted, I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an Order of Possession for Cause based on the tenant's significant disturbance of his neighbours by noise, guests and hallway debris.

I note that the tenant did not make application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the tenant's failure to take this action within ten days as well as the landlord's success in this application led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by the end of October 2017. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

As the landlord has been successful in his application, I find that the landlord is also entitled to recover his filing fee for this application from the tenant.

### Conclusion

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlord in the amount of \$100.00.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: February 6, 2018

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Residential Tenancy Branch