



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes** MT CNC LRE

### **Introduction**

This hearing was convened in response to a *late* application to cancel a One Month Notice to End Tenancy For Cause (the Notice or Notice to End), with an effective date of February 28, 2018. The tenant further seeks an Order to control the landlord's right to enter the rental unit.

Both parties attended the hearing. They respectively acknowledged exchange of all document evidence further submitted to me. The parties were given opportunity to mutually resolve or settle their dispute to no avail. A likely misunderstanding caused the tenant to exit the conference call hearing immediately before the hearing was officially ended. None the less the parties were both given opportunity to submit and present *relevant* evidence and testimony in respect to the application and to fully participate in the conference call hearing and the opportunity to present witnesses all of the *relevant* evidence that they wished to present.

### **Preliminary matters**

*The tenant requests for more time to make their application to dispute the landlord's Notice to End dated January 29, 2018*

The hearing was not provided a copy of the Notice to End in this matter. The parties testified that on January 29, 2018 the landlord personally served the tenant with a 1 Month Notice to End for Cause with the sole reason indicated in the Notice as pursuant to **Section 47(d)(i)** of the Act;

*Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.*

The tenant was forthright in testimony that the landlord's Notice to End was

accompanied by the landlord's words that they (tenant) would have to move out *if they made one more noise*. While the tenant accepted the Notice document they claim that they considered the landlord's Notice to End as conditional and therefore did not deem it necessary to dispute it as they sincerely thought they were not and would not make noise. The landlord denied making such comment and that the Notice to End followed a warning letter issued 10 days earlier, on January 18, 2018, stating that the landlord would pursue eviction if they received further complaints of noise from the tenant's unit in the late hours of the day. The landlord argued they personally gave the tenant the letter, from which, the landlord testified, the tenant ought to have known why the 1 Month Notice to End was issued. The tenant denied ever having received the letter dated January 18, 2018 and the landlord did not provide proof of service in support of issuing the letter.

In the absence of the Notice to End Tenancy for Cause in this matter I requested a copy of it by fax received from the landlord mid-hearing. The tenant orally confirmed the contents of the Notice as stated to them. It must be known that there are no *Details of Cause* provided where indicated in the Notice. None the less, I found that this fact and the tenant's reason for not filing an application on within the time limit insufficient to support an application for more time.

While I understood the tenant's version of events I found that Pursuant to **Section 66** of the Act the tenant did not present evidence supporting *exceptional circumstances*, for not filing their application to dispute the landlord's Notice to End by the legally prescribed time, as required for an Arbitrator to consider more time to make an application in this matter. Therefore the tenant's application for more time to dispute the landlord's Notice to End was dismissed.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession?

Should the landlord be ordered to comply with the Act?

Should the landlord's right to enter the rental unit, pursuant to the Act, be made conditional?

### **Background and Evidence**

In this type of matter the burden of proof in respect to the Notice to End rests with the landlord. The burden of proof for the remainder of the application rests with the tenant. It is undisputed that the tenancy started January 01, 2018. The landlord provided testimony that they received multiple complaints of intrusive noise emanating from the

tenant's rental unit in the later hours and during the night, which the tenant denies were of their conduct. The landlord determined to believe the complaints and issued a caution letter which the tenant denies receiving. The landlord determined to believe the complaints they received and subsequently issued a Notice to End. The tenant did not dispute the Notice within the legally prescribed time to do so and under the provided circumstances their request for more time to file an application to dispute the landlord's Notice failed and their application to cancel the landlord's Notice to End was dismissed.

The tenant did not advance evidence in support of the balance of their application.

### **Analysis**

*The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).*

In this type of application, the burden of proof rests with the landlord to provide evidence that the Notice was validly issued.

Having dismissed the tenant's application for more time to dispute the landlord's Notice to End of this matter and in the absence of evidence in support of the renaming portions of the tenant's claims, their application is effectively **dismissed** in its entirety.

Additionally, I find that the *reason* stated in the Notice, on its own and unsupported by additional or ancillary information; and, in the absence of evidence the tenant received a letter of caution 10 days earlier, renders the Notice insufficient of content for compliance with **Section 52** of the Act (form and content of notice to end tenancy).

**Section 55(1)** of the Acts states as follows,

#### **Order of possession for the landlord**

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The above states that if I dismiss the tenant's application or uphold the landlord's Notice to End I must grant the landlord an Order of Possession if the landlord's Notice to End complies with Section 52 in respect to form and content. In this matter I find the

landlord's Notice to End does not contain sufficient content to comply with **Section 52** of the Act, and as a result the landlord is not entitled to an Order of Possession in respect to this proceeding.

**Conclusion**

The tenant's application is dismissed, without leave to reapply.

It may be available to the landlord to seek an Order of Possession if they can support their application.

The tenancy continues until it ends in accordance with the Act.

**This Decision is final and binding.**

*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: April 25, 2018

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Residential Tenancy Branch