



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding K&G CLAIRE HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC CNC PSF RP FFT

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (“the Act”). The landlord applied 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.

The tenant applied for: cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (“1 Month Notice”) pursuant to section 47; an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; an order that the landlord provide services or facilities required by law pursuant to section 65; and authorization to recover the filing fee for this application from the landlord pursuant to section 72. The tenant originally applied for repairs to the rental unit however he testified at the hearing that all requested repairs had been completed.

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 confirmed receipt of the landlord’s 1 Month Notice to End Tenancy and both parties confirmed receipt of the other’s party’s Application for Dispute Resolution (“ADR”) and evidence for this hearing.

### Issue(s) to be Decided

Should the landlord’s 1 Month Notice be cancelled or is the tenant entitled to an Order of Possession?

Is the tenant entitled to an order that the landlord comply with the Act or provide a service or facility (paid parking at the rental unit)?

Is the landlord or the tenant entitled to recover the filing fee for their application?

### Background and Evidence

This tenancy began in 2016 as a month-to-month tenancy with a current monthly rental amount of \$1225.00. The tenant paid a \$475.00 security deposit at the outset of the tenancy. The landlord continues to hold the tenant's security deposit and the tenant continues to reside in the rental unit. The landlord sought to end the tenancy.

On February 17, 2018, the landlord issued to the tenant a One Month Notice to End Tenancy for Cause by posting it on the rental unit door. In that Notice, requiring the tenant to end this tenancy by March 31, 2018, the landlord cited the following reason for the issuance of the Notice:

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

The landlord testified that the tenant the tenant already resided in the building when he became the owner. He testified that, over the course of 2017, he received multiple complaints regarding noise from the tenant's rental unit. The landlord submitted copies of 10 written complaints from the tenant's neighbours as evidence for this hearing. The complaints came from several different neighbours within the residential premises. The landlord also submitted copies of text message, email and other correspondence between the landlord and tenant discussing complaints about the noise from the tenant's unit.

The tenant testified that his neighbours and the landlord have blown things out of proportion. He testified that he is not noisy and that he definitely isn't noisy late at night. He submitted a copy of a letter that he wrote to the landlord in response to the allegations by his neighbours. At this hearing, the tenant stated that he plays a lot of video games and listens to music but he usually does so with headphones on. He testified that, when he works, he is away for three weeks at a time and therefore some of these complaints are definitely unfounded. The tenant also stated that the police about complaints have never approached him nor has he had neighbours knock on his door to complain. The landlord testified that the other building occupants are fearful of the tenant – he pointed to some of the complaints that stated they were afraid to approach the tenant personally. The tenant also testified that he “can get loud” but that he is always aware of the time.

The tenant's upstairs neighbour testified as a witness for the landlord. Witness MD said that he has lived in the rental unit for 7 years. He has a wife and 2 children. He testified that, since the tenant has moved in, he smokes in his unit (both marijuana and cigarettes) and he parties 5 – 6 days each week. Witness MD testified that the tenant

often has 10 – 15 people visiting in his small apartment. He testified that the music is so loud at night that he and his family can hardly sleep. He testified that he has complained to the manager at the building repeatedly – in person to the landlord, by text, by email and with written letters/notes. The upstairs neighbour testified that the tenant has yelled at him when the tenant discovered that he had complained about him. He provided examples including a specific incident when the tenant had people partying at his house and those people were yelling at the witness from the patio, calling him names and swearing.

The tenant had also applied for repairs to the rental unit. At this hearing, he testified that the repairs have been addressed. He testified that the one issue that is still outstanding is his application for the landlord to comply with the Act: the tenant requests that the landlord be ordered to give him a parking space. The tenant testified that he is being discriminated against in terms of not being allowed to have a parking spot. The landlord responded that the owner has prohibited the tenant from having a designated parking spot on the property because he often works on his cars and therefore spills oil and other debris on the ground in the parking lot.

### Analysis

When a tenant applies to cancel a notice to end tenancy, the burden shifts to the landlord to justify their notice. In this case, the landlord relied on the ground that the tenant and his guests have significantly interfered with or unreasonably disturbed another occupant in the building. The landlord provided evidence to show that he regularly receives complaints regarding the tenant.

I accept the testimony of the Witness MD who I find has no other motivation in testifying against the tenant. In fact, based on the testimony of Witness MD, he testified in spite of possible repercussions for complaining about the tenant. Witness MD's testimony was generally candid and clear – it provided a series of logical events and he was able to repeat details of his testimony. Furthermore, I find that, while Witness MD was emotional in his testimony, he maintained a relatively calm demeanor.

Given that the landlord has other complaints from other occupants in the residential premises and that he has provided documentation of letters of warning to the tenant, I find that the landlord has proven, on a balance of probabilities, that the tenant has (on an ongoing basis despite warnings) significantly interfered with and unreasonably disturbed other occupants in the building. I dismiss the tenant's application to cancel the 1 Month Notice. Pursuant to section 55(1) provided below, I grant the landlord a 2 day Order of Possession.

**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.

As the tenancy will end two days after the landlord serves the tenant with the Order of Possession. Therefore, I find that the tenant's applications relating to the tenancy (provision of parking) are moot. I dismiss the following applications:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order that the landlord provide services or facilities required by law pursuant to section 65;

I find that the landlord is entitled to recover the filing fee for this application: the landlord is entitled to retain \$100.00 of the tenant's security deposit for the cost of the filing fee.

### Conclusion

I dismiss the tenant's application in its entirety for the reasons provided above.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord to retain \$100.00 of the tenant's \$475.00 security deposit in order to recover the cost of his filing fee for this application.

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: May 17, 2018

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Residential Tenancy Branch