



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNC, LAT

### Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47; and
- authorization to change the locks, pursuant to section 70.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was served the notice of dispute resolution package by registered mail but did not recall on what date. The landlord confirmed receipt of the dispute resolution package on October 13, 2018. The landlord stated that this package was sent approximately 10 days after the required time period set out in the *Residential Tenancy Regulation*. The tenant filed for dispute resolution on October 1, 2018. The landlord testified that she had time to review and respond to the materials in the dispute resolution package.

In determining whether the delay of a party serving their dispute resolution application on the other party should result in the application being dismissed, I must determine if allowing the hearing to proceed would unreasonably prejudice a party or result in a breach of the principles of natural justice and the right to a fair hearing. The principles of natural justice as it applies to the service of the notice of dispute resolution are based on two factors:

1. a party has the right to be informed of the case against them; and
2. a party has the right to reply to the claims being made against them.

In this case, the landlord testified that she had time to review and respond to the tenant's notice of dispute resolution package and documents contained therein. I find that the landlord was informed of the case against her and was able to review and respond to the notice of application and documents contained therein. I find that the landlord is not prejudiced by the continuation of this hearing and that this hearing will proceed on its merits. I find that the landlord was served in accordance with section 89 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

#### Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to change the locks, pursuant to section 70 of the *Act*?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in November of 2017 and is currently ongoing. Monthly rent in the amount of \$572.00 is payable on the first day of each month. A security deposit of \$275.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on September 26, 2018 she posted a One Month Notice to End Tenancy for Cause with an effective date of October 31, 2018 (the "One Month Notice") on the tenant's door. The tenant confirmed receipt of the One Month Notice on September 26, 2018.

The One Month Notice stated the following reasons for ending the tenancy:

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

The landlord testified that she received a written letter of complaint dated September 14, 2018 from tenant S.B. who lives below the tenant complaining of excessive noise emanating from the tenant's unit between the hours of 12 a.m. and 4 a.m. The September 14, 2018 letter of complaint was signed by tenant S.B. and entered into evidence.

The landlord testified that in response to the noise complaint letter dated September 14, 2018 she sent the tenant a warning letter dated September 15, 2018 which stated that the landlord

had received several complaints about the tenant's behavior and noise in the evening of September 13<sup>th</sup> to the morning of September 14, 2018 between the hours of 10:30 p.m. and 4:00 a.m. In the letter the landlord requested that the tenant refrain from doing anything that might wake up her neighbours. The warning letter dated September 15, 2018 was entered into evidence.

The landlord testified that she received noise complaint letters from tenant S.B. on September 20, 21, 23, and 26, 2018 which all complained of separate instances of late night/early morning loud noise and corresponding police attendance at the tenant's rental property. The above listed letters of noise complaint were entered into evidence.

The landlord also testified that she received a noise complaint letter from another tenant about loud noise emanating from the tenant's unit on September 23 between 7:05 a.m. and 7:20 a.m. The signed letter of complaint was entered into evidence. The landlord testified that she received another letter of noise complaint from a third tenant for events that occurred on September 21, 2018. The signed letter of complaint was entered into evidence.

The landlord testified that the Royal Canadian Mounted Police (the "RCMP") were called and attended at the tenant's rental property on the following dates: September 21, 22, 23, 25, and 28, 2018. The landlord testified that most of the residents of the complex are seniors and the continued presence of RCMP officers and the yelling and screaming emanating from the tenant's unit is very disturbing to the other tenants.

The landlord testified that prior to September 14, 2018 she had not received written complaints about the tenant's behavior or noise levels but had received verbal complaints. The landlord testified that the warning letter of September 15, 2018 was the first warning letter received by the tenant about her behavior or noise level.

The tenant testified that over the course of approximately one week in September of 2018, the dates of which the tenant was not sure, the tenant was physically held hostage in her own apartment by a woman she had met at the local mission. The tenant testified that she invited the woman into her home and that for the first few days the two of them just hung out but then the woman refused to leave. The tenant testified that the woman threatened to steal all the tenant's belongings and threatened the tenant with bodily harm if the tenant didn't co-operate with her. The tenant testified that she does not believe she is responsible for the noise the woman made while in her rental unit.

The tenant testified that during her confinement, she called the RCMP on numerous occasions to get the woman to leave and the RCMP would attend at her rental unit and escort the woman off the property, but the woman kept coming back and the tenant let her in out of fear of reprisal. The tenant testified that she did not tell the RCMP that the woman was holding her hostage for fear of retaliation from the woman.

The landlord testified that prior to marijuana being legalized the tenant would smoke marijuana in her apartment and that the subject rental property is a non-smoking property. The tenant denied smoking marijuana.

The tenant testified that after the incident with the woman who held her hostage she does not feel safe and would like the locks to her apartment changed. The tenant testified that she was willing to pay for the locks to be changed.

## Analysis

Section 47(1)(d)(i) states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Both parties agreed that prior to the One Month Notice being served on the tenant, the RCMP were called on approximately four occasions in the span of a week. The landlord entered into evidence noise complaint letters from three different tenants which described prolonged and loud instances of excessive noise in the late hours of the night and early hours of the morning.

I accept the tenant's evidence that a woman of whom she was fearful was at the subject rental property during the one-week period where the RCMP were repeatedly called and that the woman in question greatly contributed to the noise reported by the other tenants in the building. The tenant testified that she had the RCMP repeatedly escort the woman in question off the property but that she kept coming back and the tenant let her in. I find that the tenant repeatedly permitted the woman in question on her property and the tenant is therefore responsible for her conduct under section 47(1)(d)(i) of the *Act*. I find that the noise emanating from the tenant's unit in September of 2018 significantly interfered with and unreasonably disturbed other occupants and the landlord. I therefore dismiss the tenant's application to cancel the One Month Notice.

I find that the One Month Notice was served on the tenant in accordance with section 88 of the *Act*. Upon review of the One Month Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Section 55 of the *Act* states that 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.

I find that since the One Month Notice complies with section 52 of the *Act* and the tenant's application to cancel the One Month Notice was dismissed, the landlord is entitled to a two-day Order of Possession, pursuant to section 55 of the *Act*.

As I have determined that this tenancy will end pursuant to section 47(1)(d) of the *Act*, I decline to consider if this tenancy would end pursuant to section 47(1)(e) of the *Act*.

Section 70(2)(a) of the *Act* states that if satisfied that a landlord is likely to enter a rental unit other than as authorized under section 29, the director, by order, may authorize the tenant to change the locks, keys or other means that allow access to the rental unit.

I find that the tenant has not proved, on a balance of probabilities, that the landlord is likely to enter her rental unit other than as authorized under section 29 of the *Act*. I therefore dismiss the tenant's application for authorization to change the locks, pursuant to section 70 of the *Act*.

#### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant 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: November 09, 2018

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Residential Tenancy Branch