



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Royal lepage  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on December 4, 2018. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47 (the "Notice")

The Landlord and the Tenant both attended the hearing. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenant's application package but stated they never got the Tenant's evidence package. The Tenant stated she delivered the evidence by hand, but was not able to provide any evidence to support service in this manner. Without further evidence from the Tenant, I find there is insufficient evidence the Tenant has served her evidence to the Landlord and in accordance with the Rules of Procedure, and as such, I will not admit this evidence. The Tenant provided testimony only in the proceeding today.

The Tenant acknowledged getting the Landlord's evidence package.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Tenant acknowledged receiving the Notice on October 25, 2018. The Notice indicates the following reasons for ending the tenancy on the second page:

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord issued the Notice for several reasons. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether there are sufficient grounds to end the tenancy. In other words, my decision will focus on the first ground identified by the Landlord, as this ground is what my decision hinges upon.

The Landlord testified that the Tenant has lived in the rental unit since December of 2017, and that the complaints started in February 2018. The Landlord stated that since February of 2018, other renters in the strata complex have complained about the Tenant parking in places that are not allowed. The Landlord has also received several complaints from the strata with respect to the Tenant's dog. The Landlord stated that they collected a pet deposit and allowed the Tenant to have a dog at the start of the tenancy. However, the Landlord stated that the Tenant got rid of that dog, and obtained a different, larger dog, with a different temperament. The Landlord pointed out the Tenancy Agreement and the strata rule which states that all pets must be approved and they only approved the first dog, not the second dog, which currently lives with the Tenant.

The Landlord stated that several other occupants of the compound have complained about the noise and the behaviour of the Tenant's dog. The Landlord provided copies of these strata letters, warning letters, and emails. The Landlord stated that numerous people have complained about the excessive thumping, and dog barking on a daily

basis. The Landlord provided copies of letters to support this, and the warnings the Tenant has received, including fines from the strata. The Landlord stated that if the Tenant feels they were unfounded, she should have disputed them with the strata, but since the Tenant creates noise, and disturbance (routine thumping and dog barking), she significantly interferes with other occupants in the complex.

The Landlord provided a letter dated August 26, 2018, whereby the neighbour complained about yelling and thumping at 4:30 am on August 12, 2018. This letter also outlines a separate complaint that the Tenant is “beyond loud” and has awoken them from a deep sleep with noise (dog barking and yelling). The Landlord also provided another letter from the strata from November 5, 2018, detailing events that took place on October 23, 2018, just before the Notice was issued. This complaint indicates that there is non-stop thumping and dog barking for period of time, and that this occurs frequently and regularly.

The Tenant stated that she believes most of these complaints come from the woman who lives next door, as she has medical issues and is on the strata council. The Tenant stated that her relationship with this woman began to turn sideways at the start of this year when some issues with parking and noise began to unfold. The Tenant stated that she feels the noise is being exaggerated, and does not feel they are as bad as alleged. The Tenant acknowledges getting a new, different dog, and stated that she does have two small children who play during the daytime, but stated that this noise is only ever at a normal level. The Tenant stated that there isn't much evidence that she makes any of the alleged noise and any noise she does make is reasonable.

### Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings with respect to whether there are sufficient grounds to end the tenancy.

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

The Landlord entered into written evidence a copy of the Notice. The first issue the Landlord identified on this Notice was:

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

I first turn to the noise issues identified by the Landlord. I note there are multiple letters from the strata indicating the numerous complaints have been lodged against the Tenant with respect to noise. The complaints indicate that there is routine dog barking, yelling, and stomping, sometimes as early as 4:30 am, and that these noises are such that it has impacted other occupants sleep, and quiet enjoyment on an ongoing basis. I acknowledge the Tenant feels the noise isn't as bad as the Landlord is alleging. However, I find the evidence sufficiently establishes that there is at least one other occupant who is being unreasonably disturbed by the barking, stomping and yelling. It appears this noise is largely caused by the Tenant's dog and children. I note the Tenant has provided no evidence that she disputed any of these noise issues lodged against her, and she provided no admissible evidence for this hearing. In contrast, the Landlord has provided warning letters, emails, and fines from the strata to corroborate the noise issues.

I find the Landlord has provided a more compelling version of events and I have placed more weight on it. I find it more likely than not that the Tenant unreasonably disturbed another occupant. As such, I find the Landlord has sufficient cause to issue the Notice. The Tenant's application to cancel the Notice is dismissed. The tenancy is ending, under the Notice, as described below.

Given my findings on this matter, it is not necessary to consider the other grounds listed on the Notice.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice complies with the requirements of form and content. I find the Landlord is entitled to an order of possession effective **December 31, 2018, at 1pm** after service on the Tenant.

### Conclusion

The Tenant's application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective **December 31, 2018**, at 1:00 p.m. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be 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: December 6, 2018

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Residential Tenancy Branch