



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served and are deemed served as per section 90 of the Act.

### Preliminary Issue

Extensive discussions on evidence submissions revealed that the tenants had inadvertently submitted documentary evidence on November 19 and 22 using the landlord's codes after initially submitting documentary evidence on October 27, 2018. The hearing proceeded on this basis.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?  
Is the tenant entitled to recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on February 15, 2018 on a fixed term until February 28, 2019 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement. The monthly rent is \$1,400.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$700.00 was paid on January 12, 2018.

Both parties confirmed that on October 25, 2018, the landlord served the tenant with the 1 Month Notice dated October 25, 2018 in person. The 1 Month Notice sets out an effective end of tenancy date of November 30, 2018 and that it was being given as:

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

No details of cause were listed on the notice.

Extensive discussions during the hearing showed that both parties understood that the issuance of the 1 month notice was for multiple noise complaints.

The landlord clarified that multiple complaints have been lodged with the landlord concerning this tenant by one particular occupant of the rental premises. The landlord stated that the one tenant/complainant lives directly below the named tenant in #314. The landlord stated that multiple noise complaints have been lodged with the landlord from #314 for a period spanning March 28, 2018 to November 12, 2018. The landlord stated that there were various reasons for complaints, but the primary noise issue was "heavy shoes" or "dropped object" as related by the landlord. Both parties confirmed that at issue were heavy footsteps that could be heard that disturbed the tenant in #314. Both parties confirmed that a notice of lease violation dated May 8, 2018 was served to the tenant regarding the noise complaints by the landlord. Both parties agreed that the tenant upon being notified took pro-active measures by placing carpet throughout the rental premises to muffle the noise. This is supported by the photographs provided by the tenant. Both parties stated that due to the type of noise referred to as "heavy shoes", the parties agreed that these were normal sounds associated in a multiple unit dwelling and not excessive. Both parties agreed that no other neighbors have had "noise complaints" with the named tenant" as shown by the statement of the

neighboring unit #415. The landlord provided affirmed testimony that he felt that the tenant in #314 was perhaps “overly sensitive” to noise. The tenant provided undisputed affirmed testimony that he believes the complainant tenant is “mistaken” and that the noise of “heavy shoes” is part of “normal living” in the multiple unit dwelling. The tenant further stated that he felt that he has acted reasonably in trying to be a good neighbor in the circumstances.

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the undisputed affirmed evidence of both parties and find that both parties have confirmed that the landlord served the tenant with a 1 month notice dated October 25, 2018. Both parties confirmed the contents of the notice and although no details of cause were ever provided, both parties confirmed that this was a “noise complaint” issue as referenced in the landlord’s noise complaint summary provided.

It is clear based upon the undisputed affirmed evidence of both parties that the tenant upon being given a notice of lease violation dated May 8, 2018 that the tenant took pro-active action in mitigating any noise issues by putting down carpet throughout the rental space. Both the landlord and tenant provided undisputed affirmed testimony that the noise levels referred to were “normal living” noises as part of a multiple unit dwelling and not excessive. I find on a balance of probabilities that although the #314 tenant/complainant is hearing noise, that this noise is not “significant interference or unreasonably disturbing another occupant”. As noted above the tenant provided undisputed affirmed evidence that he has reasonably tried to mitigated any noise levels regarding the “heavy shoes” by putting down carpet throughout the rental unit upon being notified. I also take into consideration the landlord’s comments that the same tenant/complainant may be “overly sensitive” as both parties have described the noise as “normal living” noises and the tenant’s evidence of another neighboring tenant who has no noise issues. Both parties have provided undisputed testimony that no other noise complaints have been filed by any other occupants of the rental premises. On this basis, I find that although there was noise caused by the tenant, this does not constitute sufficient reason to end the tenancy. The tenant’s application to cancel the 1 month notice dated October 25, 2018 is granted. The tenancy shall continue.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I authorize the tenant to withhold one-time \$100.00 from the next monthly rent upon receipt of this decision.

Conclusion

The tenant's application is granted.

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 11, 2018

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Residential Tenancy Branch