



# Dispute Resolution Services

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## Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding BRITISH COLUMBIA KINSMEN HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

### **DECISION**

Dispute Codes CNC

#### Introduction

This hearing convened as a Tenant's Application for Dispute Resolution, filed on October 31, 2018, wherein the Tenant requested an Order canceling a 1 Month Notice to End Tenancy for Cause issued October 19, 2018 (the "Notice").

The hearing was conducted by teleconference at 9:30 a.m. on December 7, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary Matter—Tenant's Application

The Tenant named her eldest son as a Tenant on the Application; the Landlord confirmed that only the Tenant is noted as a tenant on her tenancy agreement and her children are noted as occupants.

Pursuant to section 64(3)(c) of the *Act* I amend the Tenant's Application to remove her children as Tenants on the Application.

#### Issue to be Decided

1. Should the Notice be cancelled?

#### Background and Evidence

*Residential Tenancy Branch Rules of Procedure—Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even

though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The reasons cited on the Notice were as follows:

- 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,
  - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - put the landlord's property at significant risk;
- the Tenant has engaged in illegal activity that has caused or is likely to
  - has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
  - jeopardize or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- Breach of a material term that was not corrected within a reasonable time after written notice to do so;

The Landlord also provided an attachment to the Notice which included the following additional details:

1. On September 29, 2018 between 10:00 p.m. and 11:00 p.m. the police arrived at the rental unit due to gunshots being fired.
2. The Tenant had a man, R.B., living with her who had a gun in the unit and the Tenant knew about it.
3. The man, R.B., pointed the gun at the Tenant's 17 year old son.
4. The Tenant did not inform the Landlord when her two daughters were taken into care of the Ministry of Children and Families on August 28, 2018, nor did she inform the Landlord R.B. was living with her.
5. The discharge of a firearm in the rental unit is in breach of the Crime Free Multi Housing Addendum which the Tenant signed when she signed her tenancy agreement.

Two police officers also testified on behalf of the Landlord.

The first officer, Corporal N. confirmed that he has worked with the Landlord, and the housing complex in which the rental unit is located for five years. He stated that he is a community liaison officer. He stated that the housing complex is a family environment and they want to make sure it is safe. He also noted that Tenants in the complex sign the "Crime Free Multi Housing Addendum".

Corporal N. stated that issues in this rental unit, such as drug use and trafficking, the frequent presence of transients and the discharge and use of firearms, have created security concerns in this housing complex.

Corporal N. confirmed that he has attended the rental unit numerous occasions to speak with the Tenant to discuss the traffic that comes in and out of her rental unit, the documented homeless drug addicted males who frequent her unit, and the drug use in the rental unit. He stated that she does not seem understand the negative impact of this activity on others.

Corporal N. stated that he has stopped people leaving her residence who do not know her last name and are documented drug users.

On October 5, 2018 Corporal N. stopped the Tenant as she was driving while prohibited. He stated that the Tenant told him that she was trafficking drugs in order to support her addiction. Corporal N. searched her purse and found methamphetamine, cannabis and drug paraphernalia.

Corporal N. also confirmed that he has spoken with numerous residents in the complex and they are very frightened by what goes on in the rental unit. He stated that they believe that there is drug trafficking going on and they are worried about the "unsavoury people" coming by. They also report to him that they do not want their children to play outside because of the drug paraphernalia found outside the rental unit and in the common areas.

Corporal N. also stated that he knows that the safety and security of the wellbeing of other residents in the complex depends on this eviction standing. He stated that he comes on a weekly basis and the other residents inform him that they are scared; he said that when the gun shots were heard on September 29, 2018 they were "beyond scared".

Constable M. also testified on behalf of the Landlord. He confirmed that he is frequently at the rental complex as a general duty R.C.M.P. officer and has attended three times specifically about this unit.

He confirmed that he first attended on September 29, 2018 due to a report of a fraudulent order of food. He stated that the complainants reported multiple fraudulent orders of food which appeared to be ordered by R.B. based on the description by the victims. Constable M. stated that it appeared as though R.B. was living at the rental unit based on the frequency of times R.B. made these fraudulent orders.

Constable M. also stated that there is documented trafficking of drugs going on in the rental unit.

Constable M. confirmed that he was the officer who attended on the night of the gun shots being fired from the rental unit. He stated that one of the neighbours called in because they were terrified because they heard gun shots.

Constable Martin testified that shortly after 11:00 p.m. he attended and R.B. was arrested. At the time, the Tenant came out of the house with her teenage son and she said that it was R.B. who had the gun, and that she had nothing to with it. The Tenant also stated that R.B. he was living there and had been there for two weeks. The Tenant provided the R.C.M.P. with consent to search her rental unit and the rifle and ammunition were found hidden in her bedroom. He confirmed that the gun was an assault type semi-automatic rifle, and although it is not a prohibited weapon, it has a high capacity magazine and is a high capacity semi-automatic rifle.

Constable M. stated that everything pointed to the firearm being shot from inside the rental unit based on the location of the gun and the ammunition. The Tenant told Constable M. that she and R.B. were having an argument and she wanted R.B. to leave; this argument escalated to him saying he was going to shoot himself and he went into the bedroom and discharged the firearm while she was in the living room with her son.

Constable M. also stated that he spoke with the main witness of the firearm file, who was an occupant of the rental complex. The witness stated that she knew it was a “drug house” and that she was terrified knowing that a firearm had been discharged on that street.

Constable M. also testified that on November 25, 2018 he was doing a routine patrol, shortly after midnight when he noticed a vehicle departing from the rental unit. He spoke to the occupants of the vehicle; one was a male with a history of drug usage, break and enter and other criminal charges; and the female driver who had drug usage history and transient behaviour. Both informed Constable M. that they were staying with the Tenant at the rental unit although they did not know the Tenant’s name and the driver had to check her phone to find the name. Constable M. stated that this supports a history of people with drug usage and criminal history as it is not uncommon for drug users to stay at the homes where they purchase drugs but not really know the renter/owner.

The Landlord’s Senior Property Manager, L.G., also testified as follows.

She confirmed that the Tenant moved in on November 1, 2011 with her three children at that time. She stated this is subsidized housing and the Tenant must report any change in occupants immediately to the Landlord as her rent and housing is dependent on her family composition.

L.G. stated that on October 9, 2018 the Landlord received a letter from many of the other renters in the complex with respect to the incident on September 29, 2018. In this letter the tenants demanded that the Landlord rectify this situation and end this tenancy. She noted that many of the other tenants reported being disturbed to think that those gunshots could have gone through any of their units.

L.G. stated that the Landlord also has obligation to protect the other tenants’ right to quiet enjoyment. Introduced in evidence were letters from four other neighbour tenants detailing their concerns about the Tenant and the activities at her rental unit including: drug trafficking in the rental unit; drug paraphernalia in the common areas (including the only park in the rental complex); and, the gun shots from the rental unit. These renters report living in the rental complex for 2-10 years and all express their concerns about their safety as well as that of their children’s.

L.G. confirmed that the Notice was put into the Tenant’s mailbox. The Landlord also completed a Proof of Service which was also provided in evidence.

L.G. stated that the September 29, 2018 incident is not isolated. She described the Tenant and the people who frequent her rental unit as being involved in ongoing drug dealing and use. She also reported the drug paraphernalia outside the rental unit.

L.G. also testified that there has been frequent R.C.M.P attendance due to the Tenant’s and her guest’s behaviour. Further, two tenants reported that they have seen the Tenant slumped over on the steering wheel and were concerned she had overdosed because she had drug paraphernalia on her lap and on the seat beside them.

L.G. said that other tenants have said this is not the first time they have heard gun shots and that apparently the Tenant was bragging to them about this. The other tenants have stated that “enough is enough”.

L.G. also testified that on November 27, 2018, the day after the evidence package was given to the Tenant, one of the other tenants, R.G., called 911 because the Tenant had made a threat to her and her children. Apparently the Tenant stated that she was “coming after her and her children”.

Corporal N. also confirmed that a call had been made on November 27, 2018 regarding a threat made by the Tenant. Corporal N. stated that the victim, R.G., was concerned that this was a direct result of her preparing a letter for the Landlord in respect of these proceedings.

Corporal N. noted that in the police file the Tenant admitted to threatening R.G. and that she was sorry.

The Landlord's Junior Property manager, I.L. also testified. She confirmed that she lives in the rental building, in front of the subject rental unit. She testified that she observes people coming in and out of her unit every day. She also stated that she was home on the date of the gunshot and that she heard the gunshot around 10:20 p.m. on a Saturday. She stated that as a result of the shot her dining lamp was swinging. She also said she has four children and they were extremely scared at the time.

I.L. also testified that the neighbour below, S., was crying and panicking. She was so scared she moved out shortly thereafter.

I.S. stated that she has also seen the drug paraphernalia outside the rental unit and testified that the mothers won't let their children play in the playground because the rental unit is by the playground. She also said that the residents are mostly single mothers and they support each other. As a result of the Tenant and her guest's behaviour the neighbours feel that their safety has been taken away from them.

I.S. also said that so many neighbours are so frightened they were afraid to write letters regarding the Tenant. She also stated that she is personally worried about repercussions about speaking today but she is doing it because she cares for all her neighbours and something needs to be done.

In response to the Landlord's claims the Tenant testified as follows.

The Tenant stated that the “whole issue is about the person who discharged the firearm” and she didn't want him living there and was actually a victim of the situation.

The Tenant further stated that her friends are not hardened criminals and denied that the drug paraphernalia came from her place. She said that it was a “ridiculous” accusation. The Tenant also stated that the issue is that the other renters in a clique and are angry with her because she will not socialize with them.

The Tenant denied telling the R.C.M.P. officer that she trafficked in drugs to support her drug habit. She said that she has been depressed and is “human” and has taken drugs to deal with her depression. The Tenant also stated that she has no criminal charges aside from a speeding ticket.

The Tenant apologized about what she said to the Tenant, R.G., but claimed she only “got in her face and called her a “b\*\*ch”, not that she threatened her or her children.

The Tenant testified that just her and her son who are living in the rental unit as her 9 and 13 year old daughters are in a foster home and not allowed to be at the rental unit. She further stated that she didn't

originally give the Landlord notice that she was only there with her son as originally her daughters were with friends in the complex.

The Tenant stated that the girl who got pulled over was her friend and was staying there that weekend. She confirmed that she didn't know who the guy was.

The Tenant stated that R.B. was staying with her for two weeks prior to September 29, 2018 as he was there "pushing a boyfriend out". She further stated that she was aware of the gun as of September 28, 2018 and stated that R.B. was using the gun to stay.

The Tenant stated that R.B. threatened to kill himself. She believes that the gun was shot out her window as the casing was found in her room.

#### Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities, I find as follows.

#### **I find the Landlord has met the burden of proving the reasons for issuing the Notice.**

I find that the Tenant and her guests have significantly interfered with and unreasonably disturbed other occupants of the rental complex. I also find that the Tenant and her guests have seriously jeopardized the safety of the other occupants of the rental complex.

The evidence establishes that a guest of the Tenant's discharged an assault rifle in the rental unit. While I am satisfied it was the Tenant's guest, R.B., who discharged the weapon, the Tenant admitted to knowing about the presence of the gun for at least a day prior to the incident. This was clearly very frightening for the other residents of the rental complex and created a serious and unacceptable safety risk for others, including the Tenant's teenage son.

I am also satisfied, based on a balance of probabilities, that the Tenant, or her guests are involved in drug trafficking from the rental unit. I accept Corporal N.'s testimony that the Tenant told him she was doing so to support her own drug habit. I also accept the evidence of the Junior Property Manager, I.L., as well as the letters from fellow renters, that the presence of drug paraphernalia migrating from the rental unit to the common areas is seriously concerning for the other renters and their children.

I find that the discharge of a firearm, and the trafficking of controlled substances from the rental unit adversely affects the quiet enjoyment, security, safety or physical well-being of the other occupants of the rental building.

In response to the Landlord's evidence and submissions, the Tenant stated that she believes the other occupants simply do not like her as she has chosen not to socialize with them. The evidence before me confirms that the other occupants concerns are far more serious, and that this is not merely a personal issue between quarreling neighbours. I accept that the other renters are genuinely frightened as a result of the activities going on at the rental unit.

As noted during the hearing, the Landlord has an obligation, pursuant to section 28 of the *Act*, to protect the quiet enjoyment of *all* tenants of the rental complex. I find that the Landlord issued the Notice for the reasons set out therein, and that in doing so is fulfilling their obligation to ensure the other tenants are free from unreasonable disturbances, and are able to safely use the common areas.

While the Tenant's circumstances are clearly unfortunate, she appears to lack insight into how her behaviour and the behaviour of her guests affects others. The activities described by the witnesses and in the documentary evidence filed are not conducive to the safe and healthy living environment the Landlord clearly wishes to provide to the residents of the housing complex. I find the Landlord has sufficient cause to end this tenancy.

**For these reasons I dismiss the Tenant's Application to cancel the Notice.**

Section 55 of the *Residential Tenancy Act* provides in part as follows:

**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

I have reviewed the Notice and find that it complies with section 52 of the *Act*. Having dismissed the Tenant's Application, **I therefore grant the Landlord an Order of Possession. This Order must be served on the Tenant and will be effective 2 days after service.** Should the Tenant fail to vacate the rental unit, the Landlord may file and enforce the Order of Possession in the B.C. Supreme Court.

### Conclusion

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

The Landlord is granted an Order of Possession effective two days after service.

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 10, 2018

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Residential Tenancy Branch