



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LIONS COURT MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, MNDCT, FFT

### Introduction

On January 2, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing with M.N. and L.W. as her advocates. K.C. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing package by registered mail on January 2, 2019 to the address the Landlord noted on the Notice; however, this was not the correct address. The Landlord confirmed receipt of this package by picking it up on January 18, 2019 and advised that he was prepared to proceed. Based on this undisputed testimony, I am satisfied that the Landlord was served the Notice of Hearing package.

The Tenant advised that she served the Landlord with her evidence by registered mail on January 23, 2019 to the same address for the Landlord. The Landlord stated that he did not receive this evidence; however, he was prepared to proceed without it. As such, I have accepted the Tenant’s evidence and will consider it when rendering this decision.

The Tenant stated that some of the evidence she was relying on was submitted for a previous hearing; however, she was advised that each file is separate, and any evidence submitted to a previous hearing could not be reviewed. As such, it was her

responsibility to submit the evidence she wanted to rely upon for the current hearing, if she wanted it to be considered.

The Landlord advised that he served the Tenant with his evidence by posting it to the Tenant's door on January 31, 2019 and the Tenant confirmed receipt of this. As service of this evidence complies with the time frame requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering my decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Landlord's Notice, and the other claims were dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

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 complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that a tenancy started on July 1, 2013 and rent was currently established at \$1,511.28, due on the first day of each month. A security deposit of \$650.00 was paid.

The Landlord stated that he served the Notice to the Tenant by posting it to her door on December 21, 2018 and the Tenant confirmed receipt of this. The reason the Landlord served the Notice is because the "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord." The effective date of the Notice was January 31, 2019.

The Landlord advised that he cannot confirm that the Tenant lives in the rental unit, but her son started living in the rental unit immediately after the tenancy started. He stated that the son deals drugs in the garage, that he screams at the front door to be let into the building, that there are significant noise issues in the rental unit often after 10 PM, that he has seen the son sleeping in the lobby, and that the police have been called on several occasions due to his behaviour and actions.

He stated that he has tried to work with the son to mitigate this situation, that he has compensated other tenants in the building for having to put up with these disturbances, and some tenants have vacated the building due to the ongoing incidents. He also referenced the multiple pages of documentary evidence submitted that support the numerous incidents and the complaints from other tenants of the building.

The Tenant advised that she is the only person listed on the tenancy agreement, that she does live in the rental unit, and that her son checks on her three to four times a week. She stated that she leaves the rental unit from 10 AM and returns at 10 PM every day. She explained that her son sometimes screams at her to let him in because she has not had a key fob for the building for two years, that she is hard of hearing, and that she often cannot hear the intercom if her son uses it. As well, she attributes the noise in the rental unit as regular conversation; however, as she is hard of hearing, people have to speak louder to her.

She stated that her son had never sold drugs in the building and this matter was addressed in a Dispute Resolution hearing in 2014. She submitted that the Landlord's claims of noise issues are exaggeration and hyperbole and that she has not seen any

tenants of the building move out. She stated that she was a good mother and would not allow any of the suggested behaviours to occur. She advised that her son had been hit by a bus once and paramedics were attending to him in the building. She stated that he was with a girl who had complained so aggressively that the paramedics were not giving him better care that the paramedics were forced to contact the police to attend the scene. She questioned the credibility of the Landlord's submissions and made many references to the Landlord not providing her with a key fob to the building.

The Landlord advised that as per the decision of the previous hearing, the parties had agreed to meet to sort out the fob issue; however, he stated that he has not heard from the Tenant since the hearing. Regarding the noise issues, he advised that he attempted to work with the son, but the son never altered his behaviour. He submitted that he has no financial gain from evicting the Tenant as the manner with which the Tenant and son have lived in rental unit has rendered it unrentable and it requires substantial renovations. He again read from the complaint letters from other tenants in the building to emphasize the significance and seriousness of the issues that they have been subjected to by the Tenant's son.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

### ***Landlord's notice: cause***

***47*** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

- (d) the tenant or a person permitted on the residential property by the tenant has
  - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - (iii) put the landlord's property at significant risk;

When examining the submissions before me, I find that there is much conflicting evidence; however, I find it important to note that the reason on the Notice refers to actions of the Tenant or a person permitted on the property by the Tenant. Clearly, the crux of the issues in this hearing were with respect to the behaviour and actions of the Tenant's son, whether or not they were legitimate, and whether they warranted justification for the Notice. I also find it important to note that much of the Tenant's submissions pertained to the key fob issue and whether or not she actually lived in the rental unit. However, a substantial portion of why the Notice was served revolved around the significant disturbances and corresponding noise complaints from other tenants of the building with respect to the Tenant's son's behaviours and actions.

While the Tenant's submissions on the issue of noise complaints comprise mostly of denials and speculation that the noise could be coming from other sources, I have before me nearly 20 complaint letters from other tenants of the building and warning letters issued by the Landlord to the Tenant dating back to August 10, 2018. In addition, these complaint letters come from six, separate tenants of the building.

When reviewing these complaint letters, there are consistent, similar reports of a man in the rental unit "screaming like he was going to die", engaging in "violent outbursts", "disturbing yelling", "inappropriate language", and "animal like screams" at all hours of the night. Furthermore, based on these incidents, the tenants of the building are concerned for their welfare and the welfare of their families due to the actions and behaviours of this person. While the Tenant suggested that the screaming may be attributed to a pub across the street, based on the number of consistent instances and complaints, I find it reasonable, on a balance of probabilities, that the neighbouring tenants can establish that this noise is localized and more likely than not coming from the rental unit. Moreover, despite the Tenant claiming that the yelling is due to her difficulty hearing, I do not find it reasonable that the description and context of the

yelling would be consistent with typical conversations that the Tenant would have with her son.

Furthermore, the undisputed evidence is that the Landlord issued warning letters in October 2018, advising the Tenant that there were noise complaints from other tenants related to primarily inappropriate and excessive screaming and yelling coming from the rental unit. During the hearing, the Tenant stated that “there has been no noise in the last couple of months”, which I find demonstrates the Tenant’s acknowledgment and confirmation that there was a significant noise issue, and this further supports the allegations levied by other tenants of the building. As such, I find that this causes me to place less weight on the reliability of the Tenant’s submissions refuting the Landlord’s submissions. Ultimately, I find the Landlord’s evidence more persuasive on the whole.

When reviewing the totality of the evidence before me on a balance of probabilities, I am satisfied that the Landlord has substantiated that the Tenant, or a person permitted on the property by the Tenant, has more likely than not engaged in actions or behaviour that is significant, inappropriate, and was justification to warrant the Notice being issued.

Consequently, I dismiss the Tenant’s Application, I uphold the Notice, and I find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*, that takes effect **two days** after service of this Order on the Tenant.

As the Tenant was unsuccessful in her application, I decline to award recovery of the filing fee for this Application.

### Conclusion

I dismiss the Tenant’s Application and uphold the Notice. I grant an Order of Possession to the Landlord effective **two days after service of this Order** 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: February 20, 2019

---

Residential Tenancy Branch