



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      CNC FF

### **Introduction**

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) to cancel the landlord's Notice to End Tenancy for Cause dated January 31, 2019 with an effective date of February 28, 2019, and to recover the filing fee.

Both parties participated in the teleconference hearing. At the outset of the hearing the landlord confirmed receiving the application of the tenant and their evidence. The tenant confirmed receiving the evidence of the landlord. I determined both parties exchanged all the evidence before this proceeding and for the purpose of this hearing. The hearing proceeded on the merits of the landlord's Notice to End. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present.

The parties were provided ample opportunities during the hearing to discuss and mutually resolve or settle their dispute, to no avail. I have reviewed all testimony and all admissible evidence pursuant to the Rules of Procedure. However, I have only considered evidence which is *relevant* to the issues and that only the evidence *relevant* to the issues and findings in this matter are described in this Decision.

### **Issue(s) to be Decided**

Is the landlord's Notice to End tenancy valid?  
Is there sufficient cause to end the tenancy?  
Should the landlord's Notice be cancelled?

*The landlord has the burden of proof that they issued the tenant a valid Notice to End for sufficient cause.*

## **Background and Evidence**

The relevant evidence in this matter is as follows.

This tenancy began March 01, 2018 and is subject to a written tenancy agreement. It is undisputed that VP is the primary occupant in this tenancy. Rent in the amount of \$1185.00 is payable in advance on the first day of each month. The rent is current. The rental unit is situated on the 11<sup>th</sup> floor of the residential property.

### *Landlord's Evidence*

On January 31, 2019 the landlord personally served the tenant with a Notice to End Tenancy for Cause. The Notices indicated the reason for ending the tenancy as follows pursuant to **Section 47** of the Act;

- 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,*

The landlord testified that during the last year the rental unit (1105) has produced loud noises by various activities which have intruded on the quiet enjoyment of the occupant directly below the unit (1005 / downstairs occupant). In June 2018 the landlord sent the tenant a letter generally highlighting the concerns about complaints of loud and disruptive sounds from the unit from 6:00 p.m. into the early morning and for the tenant to be mindful of their contractual agreement and conduct, so as to be respectful of other tenants.

More relevant to this matter is that seven months later the landlord testified that in mid-January 2019 they sent the tenant a letter by regular mail dated January 14, 2019 outlining a 9 day list (January 02 – January 10, 2019) of intrusive activity by the tenant, claimed endured by the downstairs occupant. The letter highlighted stomping, adults yelling, children screaming, furniture dragged or moved, items repeatedly dropped, children running, children's loud voices, and adults loud voices and laughing, amongst other identified intrusions. The landlord also submitted the downstairs occupant's handwritten notes signed by them, from which the landlord compiled their letter. The landlord testified they consider this sole complainant in this matter to be credible. The complainant did not appear in the hearing to personally testify about their version of events, nor provided to the landlord any other evidence than their summary of activity from above them. The landlord's letter ended as a "FINAL WARNING" that any further noise complaints effectively would result in eviction.

On January 31, 2019 the landlord issued the tenant the Notice to End Tenancy for Cause because, “their office continued to receive almost daily complaints pertaining to the noise level” coming from the unit. The landlord provided a similar list of complaints given to them by the same sole complainant, but now spanning the dates January 14 to January 29, 2019. These dates are a repetitive list of the same complaint made prior to January 14, 2019.

In support of the complainant’s list the landlord’s site building manager, **NA**, testified that on a non-specified date whilst in the hallway on the 11<sup>th</sup> floor of the dispute unit they heard, “children screaming, crying, and people speaking loudly” during the hours of 8:00 a.m. and 5:00 p.m.,

In support of the complainant’s list the landlord’s representative, **ES**, testified that whilst in the complainant’s unit at approximately 8:00 p.m. on January 21, 2019, they personally experienced some of the complainant’s issues of noise and were made aware by the complainant of methods by which they mitigate those issues, including them sleeping in their bathroom tub. ES did not specifically articulate what they heard while in the unit however stated they were satisfied having verified the complaint.

In support of the complainant’s list the landlord’s site staff, **SM**, testified that whilst in the swimming pool area the tenant with their grandchildren (ages 6 and 3.5 years) were noisy, and that the tenant did not appear in control of the children. They further testified that, “the children are always with the tenant.”

### *Tenant’s Response*

The tenant acknowledged they do not attend to their mail box regularly, or as regularly as they should, and as a result they did not lay eyes on the landlord’s letter dated January 14, 2019 until having received the landlord’s Notice to End soon after January 31, 2019. They testified that had they seen it earlier they could have attended to the issues within the letter and averted the landlord’s Notice to End. However, they were unaware of the complaint or of the complaints generated between January 14 and 29, 2019.

The tenant testified and provided some evidence supporting that during the day at least the older child is in school and after school care, however did not dispute that the younger child is with them (VP), during the day. The tenant further provided some evidence indicating that some of the surrounding neighbours have not experienced noise issues as have been received by the landlord.

## **Analysis**

*The Act* and other relevant publications are available at [www.bc.ca/landlordtenant](http://www.bc.ca/landlordtenant).

I have reviewed and reflected upon all the *relevant* submissions to this matter. On the preponderance of all the *relevant* evidence of the parties and on balance of probabilities, I find as follows.

I did not find the landlord's testimony of NA or SM helpful. I found their information vague and only marginally associated with the landlord's primary complaint about the tenant. I found the landlord's testimony of ES also vague but at least helpful in adding some substance to an otherwise *outlying* set of circumstances from a sole complainant; who, as they were not in the hearing, were not subject to examination or further enquiry. While I accept the landlord's submissions about the complainant's character and that they are reportedly a valued tenant, in their absence I find the landlord's entire case rests on hearsay evidence.

I find that the landlord's letter of June 2018 is sufficiently removed from the landlord's second letter seven months later. I have not been presented with evidence that the landlord had issues or cause provided them in respect to the tenant during those seven months. As a result, I have considered it but I have not placed significant evidentiary weight to it.

While I have not been presented with sufficient evidence as to when exactly the landlord mailed the tenant the letter dated January 14, 2019, I accept the landlord's testimony they mailed it on that date. I find **Section 90** of the Act deems that the letter was received on the 5<sup>th</sup> day after it was mailed: January 19, 2019. However, I also accept the tenant's rebuttal of the deeming presumption in finding that under the circumstances it is reasonable that the tenant knew nothing about the complaints of the downstairs occupant made to the landlord until they received the Notice to End and clearly later than the landlord's experience of ES at 8:00 p.m. January 21, 2019.

I am sufficiently satisfied by the landlord's evidence that there is substance to their complaint of the tenant. However, I find it would be an affront to the principle(s) of natural justice if the landlord were allowed to rely on a "FINAL WARNING" related to a breach of the Act or the agreement without confirmation that indeed the tenant had received it. While I accept that Section 88 allows for such a document to be sent by regular mail, I find it was available to the landlord to employ a more assured method to inform the tenant of the issues confronting them and of the "FINAL WARNING". I find that ending a tenancy is a serious matter and that in this matter the tenant was owed a

more robust duty of care in obtaining proof the tenant received the landlord's resolve and final warning reflecting the seriousness of the potential outcome. Effectively, I find that the tenant was not afforded a fair opportunity to respond to the landlord's issues, which then led to the Notice to End for Cause.

As a result of all the above, I find that the landlord has not aptly supported they had *sufficient cause* to issue a 1 Month Notice to End, and I therefore must **cancel** it.

It must be known that the tenant has come perilously close to losing their tenancy. The tenant should consider this Decision as an opportunity to attend to and rectify the problematic conduct as identified herein and further conduct themselves accordingly. *It cannot be overemphasized that following receipt of this Decision it remains available to the landlord to issue a new Notice to End for Cause and that the particulars of this Decision may be used to support such a Notice.*

As the tenant was successful in their application I grant them recovery of their filing fee. **I Order** that the tenant may deduct \$100.00 from a future rent owed the respondent.

### **Conclusion**

The tenant's application is granted. The landlord's Notice to End for Cause dated January 31, 2019 is set aside and is of no effect. The tenancy continues in accordance with the Act.

### **This Decision is final and binding.**

*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: March 28, 2019

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Residential Tenancy Branch