



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause ("One Month Notice").

The Tenant and two Landlords, [L.G. and S.S.], appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlords were given the opportunity to provide their evidence orally and respond to the testimony of the other Party.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties and any orders to the appropriate Party.

The Tenant said he served the Landlords with the Application in person on April 6, 2019, and that he did not have any documentary evidence to serve. The Landlords said they served the Tenant with their documentary and video evidence in person on May 6, 2019, by handing him the documentary evidence and a memory stick with the audio and video evidence. The Tenant said that he did not have a computer, so he could not review the audio or video evidence that the Landlords submitted. He said he has an email address that he accesses via his cell phone. As a result, I have not considered the audio or video evidence that the Landlords submitted, because the Tenant did not have an opportunity to review it prior to the hearing.

I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only

consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the One Month Notice valid or should it be cancelled?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant said that he has lived in the rental unit since May 2017, and that the Landlords purchased the property subsequent to the Tenant starting his tenancy.

The Parties agreed that they entered into a new tenancy agreement on October 8, 2018, with a monthly rent of \$750.00, due on the first day of each month. The Tenant said he paid a security deposit of \$325.00 to the previous landlord, since his rent had been \$650.00 when he moved in.

There is a hand-written note on the top of the signature page of the tenancy agreement saying: "No smoking, no marijuana on property." The Tenant said this was not on his copy of the tenancy agreement.

No one uploaded a copy of the One Month Notice, nor could they find a copy from which to read details to me; however, the Parties agreed that the Landlords served the Tenant with the One Month Notice in person in the last week of March 2019 with the effective date being April 30, 2019. They said it was dated, had the rental unit address on it, and that they had checked off the ground for the eviction notice being that the Tenant "significantly interfered with or unreasonably disturbed another occupant of the landlord". The Landlord said that the Tenant plays his music too loudly and smokes in the rental unit, despite their warnings not to.

The Landlord submitted the following text conversations he had with other tenants. The first texts are with the other tenant, "J.", as follows [texts reproduced as written, aside from identification redaction]:

Thu, Mar 21 8:11 PM

Other

tenant J:..... Brother listen to the music, I recorded it in living room.

Landlord:.....Is this loud music of guy upstairs [Tenant]

Other  
tenant J:.....Yea

Landlord:.....I just texted him to lower the volume... let me know if  
doesn't.

Other  
tenant J:.....He did, [thank you]

Landlord:.....Good. Thanks for letting me know.

Other  
tenant J:.....Brother sometime baby is sleeping and gets up as the base is loud.

Landlord:.....That's true.....babies get scared of loud music.

[music player inserted in text]

Landlord:.....Again it's too loud.

Other  
tenant J:.....Yeah, he's still listening to loud music!!

Landlord:.....There are 3 people on the deck... are they smoking too[?]

Other  
tenant J:.....Yea  
His wife do smoking.

Wed. Apr 17 6:37 PM

Other  
tenant J:.....Hey, we already talked about [Tenant] before that he plays loud  
music and he smoke as well. Today he was smoking again inside  
the suite upstairs. We feel a lot suffocation over here and it smell so  
bad in our house. And, also I have little daughter so we feel little  
scared for her as well about allergies and infections. So, I want to  
you to do something about that.

The Landlord submitted a written statement of his concerns with the Tenant:

I am [Landlord S.S.]. I am landlord (50% owner) of property at [rental unit  
address]. In the past I have given lots of warnings to [Tenant] to stop playing loud  
music, as all other tenants are getting disturbed. I have also asked him not to

smoke and use marijuana on the property. He has ignored all my warnings. Whenever I go to his suite, I always smell smoke. On 8<sup>th</sup> of April 2019, I went with [L.G.] (50% owner of the property) to give him 10 days notice for late payment for use and occupancy only. We both smelled smoke and use of marijuana in the suite. [Tenant] said that he is never going to stop smoking in the suite.

All my other tenants are getting bothered as [Tenant] is smoking and using Marijuana in the suite and also putting loud music. My old tenant [P.] left the house due to smoke and loud music. My new tenant [J.'s] family is complaining the same things regarding [Tenant]. She had also sent me recording of [Tenant's] loud music. The tenant [Ph.] who live in the basement (under [Tenant's] suite) had complained that [Tenant] at 4am in the morning banging things on the floor. He also sent me the recording of distribution at 4 am due to [Tenant].

I am very much concerned with my other tenant's health issues. Smoking and use of marijuana on my property is also a threat of fire on the property.

[Landlord's name]  
[signature]  
6/May/2019  
[reproduced as written]

The other Landlord, L.G., submitted the following written statement:

I am [Landlord L.G.] (50% owner) of the property at [rental unit address]. I confirm that I am the witness when [Tenant] told [Landlord] on 8<sup>th</sup> April 2019 that he is never going to stop smoking inside the suite.

Whenever I go to his suite I always smell smoke and use of marijuana on the property. I am very much worried that smoking and use of marijuana by [Tenant] in the suite is a threat of fire on my property.

[Other Landlord's name]  
[signature]  
6/May/2019

The Landlord submitted a text he received from the tenant [Ph.] on January 26, at 2:13 a.m.:

Tenant

Ph:..... Didn't wanted to do this but the guy living upstairs he's just smashing stuff on his floor which is creating a lot of noise in the basement on top of that its 2am in the morning I don't know what he's thinking about but this is not cool at all.

The Landlord sent the Tenant the following text on January 30, at 4:00 p.m.:

Mike what was wrong at 2:00 am in the morning...you banging things on the floor.....I have told you in the past you are disturbing everyone.... this will be last time next time... I am going to take some action next time.

The Landlord said in his written submissions that: "Old tenant [P.] complained many times regarding [Tenant's] loud music, smoking and use of Marijuana on the property. He has given the statement that he left the house due to disturbance created by [the Tenant]." The Landlord submitted the following undated text he received from the former tenant [P.]:

8:18 p.m.

Other

tenant P. .... Hello [brother]  
I tried knocking next guy door but he didn't respond as music is loud.  
I guess he is smoking too.  
Still music is too loud.  
Can feel smoke smell

Landlord:..... I text him to stop the music and smoking in the house.

The Landlord submitted another text from the former tenant, [P.]:

Jul 27, 2018 at 8:14 PM

Other

tenant [P.]: .... Neighbor is listening to loud music.

Landlord:..... Text me in english everything

Other

tenant [P.]: .... Neighbour is listening music loudly since morning

Landlord:..... I asked him to stop listening loud music... if he don't stop.... Text me again. In next 15-20 minutes

Other  
tenant [P.]:.....Ok

In a different text, the other tenant [P.] said:

This is in regards to our conversation regarding [Tenant] (guy living next door). I used to be [Landlord's] tenant for house on [rental unit address]. I left that house just because of this tenant [Tenant] who is living next door and every time he is used to smoke in property which was strictly prohibited and loud music every time. As I had a small baby and my family used to get affected by this. So just because of this I left that house.

Thanks.

In the hearing, the Tenant said:

People I know built the suites; I have wooden chairs in my kitchen, which would bother them downstairs. This house is not soundproofed. The sound does travel quite easily. I got home from work at 2 a.m. and was in my work boots. I had to go to the bathroom and should have taken them off.

The Landlord replied to this, as follows:

It was not just shoes. The tenant has complained that he is banging things on the floor. It is a concrete solid house. They have radiant floor heating, not a wood structure. There is no issue with insulation. There is a recording sent by [other tenant P.] of the noise at 4 a.m. It was not just once. The other tenants complained about banging on the floor, too.

The Tenant replied: "Like I said, you can hear everything. The previous tenant - sitting in my wooden chair would disturb him. The Tenant downstairs bought felt for the chairs to try to minimize it."

The Landlord replied:

This house has proper insulation. With radiant floors they have to have concrete. Taking the shoes off is not banging. At 4 a.m. in the morning - it's just when people throw, smashing or banging things. There's a difference there.

The Tenant reiterated that the residential property has radiant heat in the floors, "...but the walls are not insulated. I was speaking with a previous tenant last night who did the renovation. And it was two a.m. in the morning, not 4 a.m. I might have been getting something to eat walking around, but that was it."

The Landlord said: "If there is no insulation between the walls that will bother the people next door, not below."

The Tenant said that he was allowed to smoke by the previous landlord, so the no-smoking requirement imposed by the current Landlord is unfair.

### Analysis

Section 28 of the Act and Policy Guideline # 6 address the issue of tenants' entitlement to quiet enjoyment. A landlord must ensure that tenants' entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment; however, frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

The relevant subsections of section 28 of the Act include:

#### **Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

...

(b) freedom from unreasonable disturbance;

...

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

The evidence before me from three other tenants of the residential property is that the Tenant repeatedly played his music louder than is appropriate in a multi-tenant residential property such as this, despite repeated warnings from the Landlord and other tenants to turn the music down. I find there is sufficient evidence before me that the Tenant was breaching the other tenants' entitlement to quiet enjoyment of the residential property on an ongoing basis.

The Tenant said that the words "no smoking, no marijuana" were not on the tenancy agreement when he signed it. However, even if I accept that this was the case, there is

evidence before me that the Tenant's smoking was disturbing other tenants – breaching their entitlement to quiet enjoyment of their rental units; as such, it was unacceptable for the Tenant to continue this behaviour in the face of complaints from other tenants and warnings from the Landlord.

Based on the documentary evidence and the testimony of the Parties, I find the Landlords have established sufficient cause to end the tenancy, pursuant to section 47 of the Act. I find the Tenant significantly interfered with or unreasonably disturbed other tenants and the Landlords. As a result, the Tenant's Application to cancel the One Month Notice is dismissed, without leave to reapply.

Based on the evidence before me, I find on a balance of probabilities that the One Month Notice issued by the Landlord complies with section 52 of the Act. Given the above, and pursuant to section 55 of the Act, I award the Landlord an Order of Possession.

### Conclusion

The Tenant significantly interfered with and unreasonably disturbed other tenants and the Landlords by repeatedly playing music too loudly, by making other excessive noise early in the morning, and by smoking in the rental unit.

I find that the Landlords are entitled to an Order of Possession of the rental unit effective on May 31, 2019 at 1:00 p.m., pursuant to section 55 of the Act.

The Landlords are provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: May 22, 2019