



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PERFORMING ARTS LODGES  
VANCOUVER and [tenant name suppressed to protect privacy]

## **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 dated June 20, 2019 ("One Month Notice").

The Tenant, his lawyer, A.S., ("Lawyer") two agents for the Landlord, L.M. and G.G. (the "Agents") and the Landlord's lawyer, A.M. 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. Three witnesses, two for the Landlord, J.G. and D.E., and one for the Tenant, C.B., were also present and provided affirmed testimony.

During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party and the witnesses. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### 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 sent to the appropriate Party.

Issue(s) to be Decided

- Should the One Month Notice be confirmed or cancelled?

Background and Evidence

The Parties agreed that the fixed term tenancy began on May 29, 2006, with a monthly rent of \$565.00, due on the first day of each month. The Parties agreed that subsequent fixed term tenancy agreements are entered into each year. The Parties agreed that the Tenant paid a security deposit of \$225.00 and a pet damage deposit of \$125.00. The Parties agreed that the Tenant has lived in the rental unit for 13 years.

In written submissions, the Landlord said that the Tenant's conduct during his tenancy has been "uneventful in general". However, the Landlord added that neighbours have complained about the Tenant's "numerous visitors he has had, on a regular basis, coming and going from his suite at all hours". The Landlord said that this has disturbed neighbours. This was not addressed by the Landlord's witnesses in the hearing.

In the hearing, the Agent, L.M., described an incident in August 2018, when the Tenant was looking after a neighbour's cat. The Agent said that the Tenant entered the neighbour's unit with a key he had been given, and he discovered a man he did not know on the couch in that unit. The Agent said that an altercation occurred, in which the Tenant was hurt "quite severely", and that he had to call the police. The Agent said that the unidentified man turned out to be the boyfriend of the neighbour's daughter.

The Agent described what she called a second incident that took place in the parking lot of the residential property on February 17, 2019. She said that some sort of altercation took place in the parkade and that the Tenant suffered "major injury", she said. The Agent also added:

While speaking with him about the incident, it was not clear where the guilt lay. Out of all three incidents, no charges came out of it, but [the Tenant] said he is the victim; therefore, why were no charges laid against another party? So it is hard for the Landlord to decipher what has transpired. But based on his history on the property, there was a good possibility that somehow his behaviour might have encouraged some of this.

The Agent then spoke of the "third incident", which she said "directly impacted three other residents." The Agent said that on June 15, 2019, there was a fire alarm in the

building and that an incident occurred while residents were trying to exit the building. The Agent described how the other tenants, J.G., C.R. and D.E., were in or near the common area hallway outside their units when the Tenant also entered the hallway wearing only his underwear. The Agent and the witnesses, J.G. and D.E., testified at the hearing that the Tenant was drunk at the time. The Agent said that from the witnesses' description and an audio recording of the incident, that the Tenant:

...verbally and physically attacked all three residents and twisted [D.E.'s] wrist while she was trying to call the police. You hear the tenant repeatedly asking him to please go away. This is a huge safety concern for all three of them in addition to this happening during a fire alarm. We have a lot of elderly residents in the building. It's not easy for the Landlord to do this against [the Tenant]; the Landlord has worked for the last 10 months with [the Tenant] to support him, and listening and suggestions. It was not until this main altercation that it became clear that we are at a choice – we had to make a choice for the safety of other residents. Five people were impacted by what they witnessed or what they experienced.

In response, the Tenant and his Lawyer said that he “whole heartedly disagrees with the characterization of him being an aggressive, assaulting person. The Landlord is acting in bad faith to issue this Notice to end tenancy.” The Tenant's Lawyer referred to written submissions of other tenants on behalf of the Tenant, and said that the Tenant adopts these submissions as his evidence and asks that they be considered.

The Tenant's Lawyer said that in terms of the August 2018 incident that everything the Agent said was hearsay and “some misstated hearsay. He was in a place where he had authority to be, feeding the neighbour's cat. [The Tenant] was attacked by another person and he called the police. The other person was banned from the building.”

In terms of the February 2019 incident, the Tenant's Lawyer said:

The altercation that ensued was not with a resident of the residential property. It was with someone who followed [the Tenant], broke a door, beat [the Tenant] senseless and had caused him to have to go to the hospital. The other person was handcuffed. We shouldn't even consider why charges were not laid, as it has no bearing on [the Tenant] being the one attacked.

The Tenant's Lawyer said that neither of these incidents is an indication that the Tenant is a violent person. She pointed to the Agent's statement that this raises the possibility

that there will be future incidents with the Tenant; however, the Lawyer said that “possibilities are not provided for in the Act.”

In terms of the June 15, 2019 incident, the Tenant’s Lawyer said that the Agent has framed this as the Tenant trapping people during a fire alarm, which she said is not the case. The Lawyer said that the Tenant is approximately 5’4” and a slight man, while the other man who was in the hallway, J.G., is 6’2” and a large man – “nearly a foot taller than [the Tenant].” She added that the tenants in the hall included C.R. who is in her 80s, J.G. who is 73 years old, D.E. who is in her 60s and the Tenant who is 58.

The Lawyer addressed the audio recording that the Agents submitted, which includes a portion of the altercation on June 15, 2019. The Lawyer said that this was a voicemail left for the Agent, L.M., who D.E. knew would not be in the office, rather than a call to the police. The Lawyer also noted that there was no fire alarm going off in the background, as it turned out to be a false alarm. The Lawyer said to consider the context of what was going on.

The Lawyer said that the Tenant has been a resident of the residential property for about 13 years, and that the Agents’ evidence is that during that time his tenancy has been “rather uneventful”. The Lawyer said that the Tenant is an alcoholic who had things under control until about the summer of 2018, when, due to circumstances, he began drinking heavily. She said: “That was a painful spiral where he ultimately in March 2019, realized that he needed to get help. [The Tenant] said the characterization of them trying to help him was nonsense.”

The Lawyer said that in 2019 the Tenant entered a rehab program, which ended on June 7, 2019. “He was clean and sober, but did not understand the importance of one of the medications he was on that he couldn’t find. This led to a relapse lasting for two days on June 14 and 15. Arguments happened in the hallway; it was an argument between D.E., J.G. and the Tenant. They have mutual complaints against each other; they don’t like each other, they don’t get along and [the Tenant] had been drinking.”

The Lawyer said that after the argument happened in the hallway, the police were called and attended. Immediately after speaking to the police, the Tenant went immediately to medical professionals at the hospital. The Lawyer directed me to letters of support from a social worker and a registered nurse. The Tenant went back on his medication and has been clean and sober for 45 days, and is very much committed to his sobriety. He has had no relapses; he is attending meetings and has heaps of support – many from

people who live in the building. The Tenant submitted seven letters in support from other tenants, a social worker, and a registered nurse.

The Tenant's Lawyer said: "The [Agents'] characterization is simply not on. This was a relapse of a disease, and it is a human rights issue, based on an illness that is now under control."

In a letter dated June 18, 2019, and identified as "Exhibit C" in the Landlord's written submission, the Agent, L.M. addresses the Tenant, saying: "Over the past 10 month, [the Landlord] has received a stream of complaints from other residents arising from your interactions throughout the building, as well as some very serious altercations that have required [the local police] to attend." The Landlord then details the incidents in August 2018 and February 2019, in which the police were called, due to an altercation involving the Tenant.

The Landlord also said that she has "...had numerous verbal conversations with you, regarding these issues. I had stated that neighbors were feeling uncomfortable and concerned. More of the complaints were about you screaming and yelling profanity."

The Landlord continues in the letter to say that the Parties arrived at a resolution, which involved the Tenant going to detox and then for treatment. However, the Landlord said that this did not correct the ongoing disruptive pattern, as another incident occurred on June 15, 2019.

The Tenant's Lawyer called on the witness, C.B., to enter the room to give testimony. C.B. said he has known the Tenant for 16 years and he said:

Basically, I want to explain that people go through difficulties and [the Tenant] had been suffering from alcoholism, a disease, and he decided to get help. He proceeded to get help and it's been an improvement in how he acted.

Some things went on with his problem with alcohol. [The Landlord] should consider that – they're supposed to be dedicated to tenants, try to help them. So give some consideration, forgive and forget. I'm still friends with [the Tenant].

The Tenant's Lawyer asked C.B. to describe the Tenant on a scale of 1 – 10 before and after the treatment he attended. C.B. said that he would give the Tenant a "9" now. He went on to say: "When describing the bad parts [of the Tenant's behaviour] – my wife died of alcoholism. It's a disease; he's now an improved person. He's trying to help

himself improve.”

The Agents had the witness, J.G., call into the teleconference hearing. The Agent asked him to describe living next door to the Tenant. J.G. answered as follows:

We moved in over two years ago and there was almost immediately a problem with his playing his piano whenever he decided, then screaming on the phone and saying fuck, fuck, fuck a million times. I talked about the piano with him. Is there a way to not play so loud – not so loud singing? They make headphones. . . play silently. He said: ‘I had headphones, but it broke. I don’t like it when I can’t hear my voice, though.’ He didn’t keep it down. That was the beginning.

The Agent asked J.G. about what happened on June 15, 2019. He said:

The alarm went off, so we go out in the hall and stand there and [C.R.] was there in her chair, because she can’t walk. If we had to go down the stairs I would spot her, so she wouldn’t fall. I was standing there chatting when Danny comes out of his apartment wearing only a pair of briefs. [C.R.] asked him to go put on some clothes. She said: ‘You’re drunk.’ He said, ‘Yeah, so what?’ I was watching him, because he was drunk, I knew that a drunk’s behaviour is unpredictable. He came closer and started talking to her, saying ‘we’re friends,’ but she said ‘we’re not friends’. He got angry. I used to like you. I don’t like him, but I like you. I was watching his every move. [C.R.] can’t walk. She was afraid. So that went on like that.

We’re just standing there. My wife comes out. She has [Agent L.M.] on the phone and points the phone toward him and then he starts attacking her verbally. He grabbed her arm and the phone, and broke our phone. She got the phone away from him, but he backed off.

His anger is escalating all the time. Now my wife’s afraid every time she walks to her door.

The Tenant’s Lawyer asked J.G. why he did not call the police while this was going on, and why his wife called the Agent, who she knew would not be there. J.G. said that his wife did call the Agent first, but that later the police were called.

The Agent also had D.E. testify after her husband, J.G.; D.E. corroborated much of

what J.G. had said. The Tenant's Lawyer asked D.E. if she liked the Tenant and D.E. said that she's never had a conversation with him, and that she does not know him. The Lawyer asked if she likes it when he plays the piano, and D.E. said she does not like it when he plays loudly "and just bangs on it." When asked if she pounds on the wall when this happens, D.E. said: "I did it once. I didn't pound on it loudly, just like a proper tenant does." D.E. said she once politely knocked on the wall.

When asked if she and her husband have loud arguments in their suite, D.E. said: "We have the good kind."

The Tenant submitted a statement through his Lawyer, which includes the following:

In or around 2018, new neighbours, [D. and J.] moved into the suite next door to the Tenant's Suite. Almost immediately upon moving in, [D.] complained consistently about any piano sound coming from the Suite, even during regular daytime hours, and would make her displeasure known to the Tenant by pounding on the Tenant's wall or door and yelling at him (the 'Noise Complaints'). The Noise Complaints reached such a stage that they even included [D.] complaining about the Tenant opening and closing the door of his dryer and talking on the phone; her notes submitted as evidence by the Landlord appear to say 'yap, yap, yap' as a complaint about the Tenant talking on the phone.

Whenever the Tenant would play his piano, [D.] would begin pounding on the wall. This would sometimes begin only moments after the Tenant had begun to play. The pounding would sometimes be accompanied by screaming and swearing from [D.] directed at the Tenant. At one point, [D.] pounded on the wall so hard a movie reel that had been hanging on the wall fell off and hit the Tenant.

In his submissions, the Tenant provided letters of support from his other neighbours, who the Lawyer said do not want to see him leave the residential property. In his letter, Z.B. said he has been the Tenant's friend for 13 years, since the housing complex opened. He said:

I got to know him and found him charming and interesting, everyone has a bad day occasionally, but that's life. However that notwithstanding, we gained a good friendship. We may not be the same person, but we found common ground. Sadly he has issues with alcohol, which is considered a medical issue and treatments are recommended. [The Tenant] has done just that, he went and graduated his rehab and once again he's delightful. This sickness can take some

time, but he's definitely on his way. May things improve quickly for him, we're rooting for him.

Another tenant, R.F.D. said the following:

To whom in may concern,

I am writing this on behalf of [the Tenant]. I have known [the Tenant] since this building opened in 2006, and I am utterly astounded to hear about the situation he is facing in the building. I have never known him to be belligerent or aggressive or unkind. He has always been very helpful and friendly to me. In fact, I knew his ex partner many years ago when his son was born and I used to babysit for her. He is a very devoted Dad. [The Tenant] has always been upbeat and cheerful and a friendly face in the building. This building is very unique, created specifically for . . . I love living here.... We are a collection of very unique talents, a family in a way, and it is distressing to know that [the Tenant] is facing removal from the building due to circumstances that actually I was unaware of until this morning.

Sincerely  
[signed R.F.D.]

Another tenant, Y.A., said:

I am writing in support of the above [Tenant], whom I have known for about ten years as a resident of the [residential property]. I have never found him anything but pleasant and helpful, and he was an enthusiastic volunteer when we needed some digging in our roof garden a few years ago. I have never had any reason to feel threatened by him. I have no hesitation in confirming that our exchanges have always been friendly and unfrontational.

Sincerely,  
[signed Y.A.]

The latter two letters of support were from women and there were four other letters from other tenants of the residential property supporting the Tenant.

The Tenant also submitted a letter from a registered nurse, J.F., dated July 10, 2019, who says she works at a substance use disorder clinic, at which the Tenant has



attended. She said she has been working closely with the Tenant over the past four months. J.F. said:

[The Tenant] has contended with Alcohol Use Disorder and has completed the 7 week recovery program at [the treatment centre] graduating on June 7, 2019. Although there was a brief relapse, [the Tenant] has resumed regularly taking the prescribed medication to assist with cravings and maintaining abstinence. [The Tenant] has been reflective and proactive in his pursuit for recovery and I sincerely believe in his intentions for recovery and wellness.

I would like to add that myself, along with his interdisciplinary team here at [the clinic] who support him, strongly feel that losing long term housing would destabilize and be a detriment to the progress he has made towards wellness. [The Tenant] has been pleasant, cooperative, and grateful for his care at [the clinic] and I look forward to continuing to work with him.

Yours sincerely,  
[signed J.F.]

The Tenant also submitted a letter of support from a social worker who corroborated what J.F. said in her letter.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

In terms of the “first incident” in August 2018, I find that the Agent did not indicate how the Tenant was at fault for anything in this regard. I find it reasonable to infer that the neighbour thought positively enough about the Tenant to give him a key to her unit and to ask him to take care of her cat. The daughter’s boyfriend was banned from the building and the Tenant was badly hurt, as a result of the incident, according to the Agent’s testimony. I find this “incident” is not evidence of questionable or unreasonable behaviour on the part of the Tenant.

Similarly, the incident in February 2019 resulted in the Tenant suffering “major injuries” from a stranger to the residential property. The Agents acknowledged that “it was not clear where the guilt lay”. Again, I find this is not evidence of unreasonable behaviour on the part of the Tenant.

I find that the Tenant's behaviour on June 15, 2019 was inappropriate and undoubtedly distressing to the other tenants, but it was one incident. Further, I find it telling and indicative of the seriousness of the Tenant's behaviour that D.E. chose to call the Agent to leave a voicemail message, rather than calling or threatening to call the police.

I find it clear that the Tenant, J.G. and D.E., do not get along with each other; however, given the evidence before me, overall, I find it is more likely than not that fault for the animosity can be assigned to all three parties.

The incident on June 15, 2019, has been attributed to a two-day relapse in abstaining from alcohol consumption, which was related to a medication mix-up. The Tenant has provided supporting documents from other tenants of the residential property and from two of his health care workers. I find these documents support the conclusion that the June 15, 2019 incident was a one-off event that is out of character for the Tenant, especially if he abstains from alcohol.

The Landlord served the Tenant with the One Month Notice on grounds set out in section 47(1) that:

- (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;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

. . .

- (ii) 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
  - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- [emphasis added]

The underlined adverbs above make it clear that the legislators did not intend a tenant to be evicted for behaviour anything less than "significantly interfered with" or "seriously jeopardized" another tenant or the landlord [emphasis added]. While the Tenant's

behaviour on June 15, 2019, may have been close to falling into this category, I find that one incident for which the Tenant bears responsibility over the course of the last year is insufficient to end a long-term tenancy under section 47 of the Act. I find that the Landlord has provided insufficient evidence to uphold the One Month Notice.

As a result, I cancel the One Month Notice and order that the tenancy continues until ended in accordance with the Act.

### Conclusion

The Landlord did not provide sufficient evidence to support ending the Tenant's tenancy pursuant to section 47 of the Act. I, therefore, cancel the One Month Notice and order that the tenancy continues until ended in accordance with the Act, regulation and tenancy agreement.

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: July 31, 2019

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Residential Tenancy Branch