



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant, the landlord and the landlord's witness attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlord was served with the tenant's application for dispute resolution via registered mail. I find that that landlord was served with the tenant's application pursuant to section 89 of the *Act*.

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 is compliant with the *Act*.

### Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?

2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. If the tenant's application is dismissed and the landlord's Notice to End Tenancy is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 15, 2010 and is currently ongoing. Monthly rent in the amount of \$1,492.00 is payable on the first day of each month. A security deposit of \$625.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree to the following facts. The rental property is a four-plex where there are two units above and two units below. The rental unit is one of two units on the upper floor. There is a single furnace for both the upper and lower units providing heating. The thermostat for the heating system was previously located in the tenant's upper unit but was moved to the lower suite in November, 2018.

The landlord testified that on May 30, 2019 he personally served the tenant with a One Month Notice to End Tenancy for Cause with an effective date of July 1, 2019 (the "One Month Notice"). The tenant confirmed receipt of the One Month Notice on May 30, 2019.

Both parties agree that this tenancy is acrimonious and that this is the parties' fourth arbitration with the residential tenancy branch. The file numbers for the previous arbitrations were entered into evidence.

Both parties agree that the first two arbitrations concerned two separate Two Month Notices to End Tenancy for Landlord's Use of Property (the "Two Month Notices"). Both parties agree that the Two Month Notices were cancelled in Decisions dated August 2, 2018 and November 8, 2018.

Both parties agree that the third arbitration occurred on June 28, 2019 and regarded the tenant's claim for:

- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

In that arbitration the tenant claimed that the temperature in their suite is unbearable, hot at some times and freezing cold in others. The tenant claimed that the landlord moved the thermostat controls to the lower suite as retaliation for the Two Month Notices being cancelled in the previous arbitrations.

The arbitrator dismissed the tenant's application, stating:

The evidence shows that there may be some difference between the temperature indicated on the thermostat and that on the tenant's thermometer but I find this to be within the realm of what would normally be expected. I find the temperatures shown on the tenant's thermometer to remain in the range of what would normally be expected for the geographic area. I find the tenant's complaints to be subjective and exaggerated.

I do not find the tenant's submission that the relocation of the thermostat was part of a concerted effort by the landlord to end this tenancy or retaliate against the tenant for the results of previous hearings to be credible or convincing.

The One Month Notice stated the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

The landlord testified as follows. In early November 2018 he moved the thermostat controls from the upper suite to the lower suite. The landlord moved the thermostat controls because the lower tenant was complaining that the tenant kept the thermostat too low and that they were freezing cold.

The landlord testified to the following facts. The landlord received a letter dated December 18, 2018 from the lower tenants. The letter stated that the tenant and his wife

and been harassing them since the thermostat was moved to the lower unit. The tenant and his wife have been leaving notes and contacting the lower tenant on skype stating that if they do not lower the temperature they will call the police and the tenancy association. The December 18, 2018 letter was entered into evidence.

The lower tenant testified that the problems with the tenant and his wife started in the fall of 2018 and escalated after the thermostat was moved to the lower unit. The lower tenant confirmed the accuracy of the contents of the December 18, 2018 letter he sent to the landlord.

The landlord testified that on December 19, 2018 he sent the tenant a letter which stated that if the tenant and his wife did not stop harassing the lower tenants they would be evicted.

The tenant testified that he believed the thermostat was moved in an effort to get him and his family to move out of the subject rental property. The tenant testified that he only left the lower tenants two notes about the temperature. The tenant did not dispute leaving the lower tenant skype messages about the temperature. The tenant testified that he did not contact the lower tenant about the heat after he received the letter dated December 18, 2018 from the landlord.

The landlord testified to the following facts. The landlord received a letter from the lower tenants dated May 25, 2019. The letter stated that the tenant and his wife are still harassing the lower tenants about the thermostat. The letter states that every time this week that they have turned on the furnace, the tenant and his wife blast music into the vents and bang on the floor in retaliation. The May 25, 2019 letter was entered into evidence. The landlord also entered into evidence video recording showing loud music coming from the vents in the lower unit when the thermostat reads over 21 degrees Celsius.

The lower tenant confirmed the content of his May 25, 2019 letter. The lower tenant testified that the actions of the tenant and his wife are particularly disruptive to their daughter who has special needs and that the tenant and his wife are aware of his daughter's condition.

The tenant denied purposefully blaring music through the vents and stomping on the floor in retaliation for the lower tenants turning on the furnace. The tenant posited that his wife and kids may have been dancing or playing but it was unrelated to the furnace.

The landlord testified that on May 28, 2019 he sent the tenant and his wife a letter via registered mail which states that the landlord received another complaint from the lower tenants. The letter goes on to state that the excessive noise and behaviour will no longer be accepted and that their conduct constitutes a breach of the tenancy agreement and is cause for eviction.

The tenant testified that he received the landlord's letter dated May 28, 2019 on May 31, 2019.

The landlord testified that on May 28, 2019 the lower tenant provided the landlord with another complaint letter which states that the tenant and his wife have continued to blare loud music into the vents when the furnace is turned on and bang on the floor. The lower tenant confirmed the accuracy of his May 28, 2019 letter to the landlord.

The landlord entered into evidence a text message from the lower tenant to the landlord which states that the tenant and his wife started stomping "like crazy", when the thermostat was increased to 23 degrees Celsius. The text goes on to state that the lower tenant is upset and scared and considering calling the police. The landlord testified that the text message was sent on May 28, 2019. The text message was entered into evidence.

The landlord testified that on May 30, 2019 he received a call from the tenant asking if there was something wrong with the furnace and why it was running. The landlord testified that he told the tenant that it was working normally and was on because it was cold in the lower unit. The landlord testified that the tenant responded by saying that the lower tenants and the landlord were making his life difficult and that he planned on escalating the loud music, stomping and texting to make life miserable for the landlord and the lower tenants.

The tenant testified that the landlord called him on May 30, 2019 and that he does not recall saying those things to the landlord.

The witness testified that he has not had conflict with the tenant or his wife since the One Month Notice was issued, but notes that it is summer and the furnace has not been used. The witness testified that he is concerned about further conflict when the weather cools down.

The landlord testified that after he received the telephone call from the tenant he served the tenant with the One Month Notice.

### Analysis

I find that the One Month Notice was served on the tenant in accordance with section 88 of the *Act*. I find that the One Month Notice conforms to the form and content requirements in section 52 of the *Act*.

Given the conflicting testimony, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

Upon review and consideration of the evidence and the testimony of the landlord, the tenant and the lower tenant, I find that the tenant's testimony is not in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

I find the tenant and or his wife blared loud music and stomped on the floor in May of 2019 when the lower tenants turned on the furnace. I find that it is more likely than not that the tenant threatened to increase the disturbances to the lower tenant to disrupt the lives of the lower tenant and the landlord. I find that the tenant's excuse for the loud music played at the exact times the furnace was turned on to be unsubstantiated and unrealistic.

Section 47(1)(d)(i) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if 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.

Pursuant to section 47(1)(d)(i) of the *Act*, I find that the conduct of the tenant towards the lower tenant, from 2018 to 2019, to have unreasonably disturbed the lower tenants. I therefore dismiss the tenant's application to cancel the One Month Notice.

I also conclude, as stated in the June 28, 2019 decision, that the previous arbitrations concerning the Two Month Notices, are unrelated to the current dispute and do not constitute a concerted effort on the part of the landlord to evict the tenant.

Section 55 of the *Act* states that 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 find that since the One Month Notice complies with section 52 of the *Act* and the tenant's application to cancel the One Month Notice was dismissed, the landlord is entitled to an Order of Possession effective July 31, 2019.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on July 31, 2019**, which should be served 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: July 19, 2019

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Residential Tenancy Branch