



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COLUMBUS CHARITIES ASSOCIATION and  
[tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNC

### Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:45 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. The landlord's property manager ("**PB**") and building manager ("**BS**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. They called one witness ("**BH**"). I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's representatives and I were the only ones who had called into this teleconference.

The PB testified that the landlord was served with the tenant's notice of dispute resolution package and supporting evidence package. I find that the landlord has served with the required documents in accordance with the Act.

The landlord did not provide any documentary evidence in support of its response to the tenant's application.

### Issues to be Decided

Is the tenant entitled to an order cancelling the Notice?

## **Background and Evidence**

While I have considered the documentary evidence and the testimony of the landlord's agents and witness, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a month to month tenancy agreement at some point in 2004. No copy of the tenancy agreement was submitted into evidence. Monthly rent is \$551. The tenant did not pay the landlord a security deposit or pet damage deposit.

The rental unit is located in a multi-unit residential property. The residential property is an independent living facility for seniors.

On October 26, 2019, PB personally served the tenant with the Notice. The Notice indicates an effective move-out date of November 26, 2019.

The grounds to end the tenancy cited in the Notice were:

- 1) the tenant or a person permitted on the property by the tenant has
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - has put the landlord's property at significant risk;
- 2) the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to
  - damage the landlord's property;
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
  - jeopardize a lawful right or interest of another occupant or the landlord;
- 3) tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The landlord did not provide any further details of the tenant's alleged offending conduct on the Notice.

PB testified that the tenant drinks to excess on a regular basis. He testifies that he does not believe the tenant can take care of himself and that he needs to be placed in an assisted living care. Both PB and BH gave substantial evidence as to the tenant's drinking habits. I will not record them here, as they are not relevant to the claim at hand.

What is relevant, however, is the conduct that the tenant exhibits when he is intoxicated. PB testified that on October 4, 2019, the tenant wedged his walker in the elevator door while intoxicated and damaged the elevator causing \$400 of damage.

BH, who is an occupant of the residential property, testified that the tenant often returns home from the bar late at night (between 1:00 and 2:00 am) and “buzz” all of the residents from the front door intercom in an attempt to have someone let him in the residential property.

BH testified that on one occasion the tenant was so drunk that he was unable to walk, and that he was crawling through the corridor on the floor the rental unit is located. He was yelling for people to carry him to his room. BH testified that the other occupants of the residential property are afraid of the tenant due to his frequent public intoxication.

PB testified that the rental unit is extremely messy. He did not provide any photographs of the rental unit to show its condition. PB also testified that on one occasion the tenant, while drunk, drove his truck on the lawn next to the residential properties’ parking lot. He testified that the tenant often takes up multiple parking spots with his truck when parking. He also testified (and BH confirmed) that on one occasion the tenant spun his tires out for a prolonged period of time in the parking lot at 2:00 am causing a great deal noise and disturbance to the occupants of the residential property.

### **Analysis**

I find that the Notice was personally served on the tenant in person on October 26, 2019. I find that this constitutes effective service under the Act.

Rule 6.6 states:

#### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the

other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, the landlord must prove it is more likely than not that the tenant acted as alleged on the Notice.

I am troubled by the lack of corroborating evidence provided by the landlord. I would have expected photographs showing the condition of the rental unit and the damage allegedly caused by the tenant to the landlord's property or letters from the landlord to the tenant warning him that his conduct may be grounds for ending the tenancy. The lack of such corroborating documentary evidence gives me pause to consider whether PB's testimony is accurate.

However, I find BH's testimony to be persuasive and credible. His testimony is based on first-hand knowledge, and I accept that, as a resident of the residential property, he is well-positioned to give testimony as to conduct of the tenant and its effect on himself and other occupants of the residential property.

I accept BH's testimony that the tenant, on more than one occasion, has "buzzed" other occupants in the early morning to let him into the residential property. I accept BH's testimony that the tenant spun the wheels of his truck in the parking lot at 2:00 am, disturbing the other occupants. I accept BH's testimony that the tenant crawled through the hallways of his floor and yelled at other occupants to carry him to his room. I accept that, based on this conduct, other tenants are reasonably afraid to interact with the tenant.

Section 47 of the Act states:

**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,

I find that the tenant's conduct, as described by BH, constitute an unreasonable disturbance to other occupants of the residential property. As such, it is unnecessary for me to examine the other reason listed by the landlord on the Notice for ending the tenancy. To prove that a Notice is valid, the landlord does not need to prove that each reason for issuing the Notice is valid, they need prove that only a single reason is.

I find that the Notice is valid. Accordingly, I dismiss the tenant's application to cancel the Notice.

Section 55 of the Act states:

**Order of possession for the landlord**

55(1) 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 the form of the Notice complies with section 52 of the Act.

At the hearing, PB stated that, if the landlord was successful in showing that the Notice was valid, the landlord would like an order of possession to be effective January 31, 2020.

As I have dismissed the tenant's application, and I have found that the Notice complies with section 52 of the Act, I find that the landlord is entitled to an order of possession effective January 31, 2020 at 1:00 pm.

**Conclusion**

I dismiss the tenant's application.

Pursuant to section 55 of the Act, I order that the tenant and any other occupant on the rental unit premises deliver full and peaceable vacant possession and occupation of the rental unit to the landlord by January 31, 2020 1:00 pm.

This order may be filed and enforced in the Supreme Court of British Columbia.

I order that the landlord serve the tenant with a copy of this decision and attached order immediately upon receiving it.

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: December 20, 2019

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Residential Tenancy Branch