



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPITOL REGION HOUSING CORPORATION  
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 an order to cancel a One Month Notice to End Tenancy for Cause ("Notice") pursuant to section 47.

Both the tenant and the landlord attended the hearing. The landlord was represented by KL ("landlord"). As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

### Preliminary Issue

The tenant's application misnamed the landlord's full name which ends in "corporation". In accordance with section 64(3) of the *Act*, the landlord's name was amended to reflect the name indicated on the tenancy agreement and the One Month Notice To End Tenancy for Cause.

### Preliminary Issue

This teleconference hearing was set for one hour. Near the end of the hearing, the tenant chose to disconnect from the teleconference before the hearing had concluded, at 11:50 a.m. The hearing continued until approximately 11:51 a.m. at which time the landlord and I left the hearing.

### Preliminary Matters

Section 63 of the *Act* allows an Arbitrator to assist the parties settle their dispute and record the settlement in the form of a decision and order if the parties settle their dispute during the dispute resolution proceeding. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms of a settlement. The parties could not reach consensus on the terms of a settlement; therefore, I heard testimony, considered the evidence, and issue a decision to resolve this dispute.

Issue(s) to be Decided

Should the tenancy end for the reasons stated on the One Month Notice To End Tenancy for Cause?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The month to month tenancy began on September 1, 2019. The rental unit is in a subsidized housing unit and the tenant named her two daughters as additional occupants in the rental unit on the tenancy agreement.

A copy of the tenancy agreement, signed on August 26, 2019 was provided as evidence. The landlord notes that clause 14 of the agreement reads:

Conduct:

*In order to promote the convenience, safety, welfare and comfort of other tenants in the building, the Tenants and guests shall not disturb, harass, or annoy tenants of the building or neighbours, and shall not cause loud conversation, music, television, or other irritating noise to disturb peaceful enjoyment at any time; and shall MAINTAIN QUIET BETWEEN 11 :00 P.M. AND 8:00 A.M. Any Tenant who causes other tenants to vacate the premises because of noise or other disturbance, harassment, or annoyance, shall indemnify the Landlord for any reasonable costs and losses caused, and the tenancy may be terminated on short notice pursuant to the Act. If there is play equipment at the housing complex, it shall be used not earlier than 8:00 a.m. nor after 8:00 p.m. or sunset, whichever is earlier.*

Also included in the tenancy agreement is the following addendum:

**ADDENDUM D: CRIME-FREE MULTI-HOUSING PROGRAM**

*The Tenant acknowledges and agrees that this Addendum is a material term of the Housing Contract and that its breach will provide grounds for termination of the agreement.*

*Tenant(s), any member of this Tenant's household, and any persons affiliated with the Tenant or invited onto the residential property or residential premises by the Tenant(s) or any member of the Tenant's family shall not engage in any criminal activity on the premises or property including, but not limited to:*

- a) any drug-related criminal activity;*

- b) solicitation (sex trade workers and related nuisance activity);*
- c) street gang activity;*
- d) assault or threatened assault;***
- e) unlawful use of a firearm; and/or*
- f) any criminal activity that threatens the health, safety or welfare of the Owner or Operator, or other residents or persons on the residential property or on any part of the Owner's property.*

*I AGREE THAT VIOLATION OF THE ABOVE PROVISIONS, WHICH IS A REASONABLE AND MATERIAL TERM OF THE HOUSING CONTRACT SHALL BE CAUSE FOR A NOTICE TO END MY TRANSITIONAL HOUSING CONTRACT,*

*A single violation of any of the provisions of this addendum shall be deemed a serious violation and material noncompliance with the Housing Contract. It is understood and agreed that a single violation shall be cause for a notice to end my occupancy being served on me. Unless otherwise provided by law, proof or violation shall not require criminal conviction, but shall be predominant of the evidence.*

The landlord provided the following testimony. On September 21<sup>st</sup>, the tenant advised the landlord that her daughter had punched her, causing police intervention. The landlord gave the tenant a warning letter on September 23<sup>rd</sup>, reminding the tenant that the disturbances breach the addendum D.

The landlord testified that she received multiple emails from several tenants regarding disturbances coming from the tenant's unit. Copies of the emails were provided as evidence. Although each incident was described in detail, the landlord points out a few incidences that she considers disturbing. An email from another occupant in the building indicates that on November 7, 2019 her door bell was rung over twenty times at 11:10 p.m. and the door was banged on loudly and aggressively. The tenant acknowledged it happened, but stated it was her daughter who did this. The same occupant in the building describes an incident on November 21, 2019 where she heard a person in her yard screaming "she is throwing knives". This incident will be described in detail below.

The landlord also related an incident witnessed by the staff at the building that took place on November 13<sup>th</sup> between 10:40 a.m. and 11:20 a.m. whereby the police were called and the tenant and her daughter were yelling at the police. A copy of the report was provided as evidence. During the hearing, the tenant acknowledged this disruption was caused by her daughter who suffers from addictions.

Lastly, the landlord testified that the police were called to attend to an incident where the tenant was charged with three counts of assault and one count of assault with a

weapon on the night of November 21<sup>st</sup>. Audio recordings taken by another occupant of the building the night of November 21<sup>st</sup> was provided as evidence by the landlord. The tenant testified that this charge resulted from an incident where the tenant was attempting to have her daughter leave the residence.

In evidence, the landlord provided the following: letters to the tenant dated September 23<sup>rd</sup>, October 21<sup>st</sup>, November 14<sup>th</sup> and November 18<sup>th</sup>. Each of the letters describe the tenant's responsibility to not disturb the quiet enjoyment of the other occupants of the building or to abide by the crime-free multi-housing addendum in the tenancy agreement.

On November 22, 2019 the landlord served the tenant with the One Month Notice To End Tenancy for Cause by posting it to the tenant's door which the tenant acknowledges receiving the same day. The reasons provided for ending the tenancy are as follows:

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;
2. the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
3. breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

The effective date noted on the Notice is December 31, 2019.

The tenant provided the following testimony. The next door neighbour is attacking her tenancy. Her eldest daughter was previously living on the street and came to live with her. The daughter has addition issues and is undergoing counselling. The daughter is enrolled in a three month course of counselling and has moved out of the tenant's rental unit and into her father's house, no longer causing disturbances. The tenant was hopeful that the landlord would move her and her remaining daughter into a two-bedroom unit, now that the elder daughter is no longer living in the rental unit. That daughter is no longer supposed to come back.

Regarding the assault charge against her, the tenant is confident that the charges will be dropped although she did not provide any evidence that it has yet happened. The tenant testified the victim of the assault no longer wishes to press charges against her.

#### Analysis

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause, the tenant may, within ten days, dispute it by filing an application for dispute resolution with the Residential Tenancy Branch. The parties agree the tenant was served with the One Month Notice To End Tenancy for Cause on November 22, 2019 and filed to

dispute it on November 27, 2019, well within ten days. If the tenant files the application, the landlord bears the burden to prove he or she has valid grounds to terminate the tenancy for cause. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for any of the reasons identified in the Notice.

The landlord's first reason for ending the tenancy, namely that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord has been proven to my satisfaction. The tenant readily acknowledged that her daughter was banging on another occupant's door and rang her doorbell throughout the night of November 7, 2019. Although it was not the tenant herself who significantly interfered with or disturbed the other occupant, the evidence shows that the disturbances were caused by a person permitted on the property by the tenant, her daughter. I find a person permitted on the residential property by the tenant has violated section 47(1)(d)(i) of the Act.

Second, the parties agree the tenant was charged with assault charges stemming from the incident on November 21, 2019. The tenant signed the tenancy agreement and addendum D to the tenancy agreement which states:

*The tenant shall not engage in any criminal activity on the premises or property including assault or threatened assault;*

*A single violation of any of the provisions of this addendum shall be deemed a serious violation and material noncompliance with the Housing Contract. It is understood and agreed that a single violation shall be cause for a notice to end my occupancy being served on me. Unless otherwise provided by law, proof or violation shall not require criminal conviction, but shall be predominant of the evidence.*

The tenant rightly pointed out that she has not been convicted of an assault, however the fact that she has been charged with the offence clearly demonstrates she has breached the terms of the tenancy agreement and the addendum. I find the evidence provided by the landlord clearly demonstrates the second reason for ending the tenancy on the Notice has been proven. The audio recording of the events on November 21<sup>st</sup>, taken from inside the neighbour's rental unit clearly demonstrates another occupant's quiet enjoyment was adversely affected that night. Further, based on the nature of the charges laid against the tenant, I am satisfied the security, safety or physical well-being of the remaining occupants in the housing complex is adversely affected. For these reasons, I uphold the landlord's One Month Notice To End Tenancy for Cause issued on November 22, 2019. As the first two reasons for ending the tenancy have been proven to my satisfaction, the third reason provided on the Notice will not be analysed.

The effective date stated on the landlord's Notice has passed. Therefore, I find the landlord is entitled to an order of possession effective two days after service upon the tenant, pursuant to section 55 of the *Act*.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises 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: January 22, 2020

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Residential Tenancy Branch