



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals Ltd. 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 January 3, 2020 ("One Month Notice").

The Tenant and two agents for the Landlord, T.M. and K.S. ("Agents"), 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 Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. 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.

The Tenant said he served his Application and Notice of Hearing documents on the Agents in their office; however, the Tenant said he could not remember when he did this. The Agents confirmed having received the Application documents from the Tenant. The Agents said they served their documentary evidence to the Tenant in person on February 26, 2020. The Tenant said he received these documents on February 26<sup>th</sup>; however, he said he did not have sufficient time to review them. When I asked the Tenant if he would like to adjourn the hearing for more time to review the Landlord's evidence, he declined this opportunity, saying he was "ready to go."

Rule 3.15 states that a respondent's evidence must be received by the applicant and the RTB not less than seven days before the hearing. Accordingly, I find that the Landlord complied with this Rule by having served the Tenant with their evidence eight days prior to the hearing. I have, therefore, accepted and considered the documentary evidence submitted by the Landlord. The Tenant did not provide any evidentiary

submissions to support his Application.

### 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 Cancelled or Confirmed?
- Is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Parties agreed that the periodic tenancy began on June 1, 2015, with a monthly rent of \$895.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$447.50, and no pet damage deposit. The Parties agreed that the Tenant currently pays the Landlord \$1,016.00 in rent per month.

The Agents said in the hearing, which was supported by their documentary evidence, that they served the One Month Notice on the Tenant on January 3, 2020, by posting it on the door of the rental unit. It had an effective vacancy date of February 29, 2020. The grounds checked off for issuing the One Month Notice were because:

The Tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the Landlord; and

The Tenant has:

- failed to comply with a material term, and
- not corrected the situation within a reasonable time after the landlord gives written notice to do so.

The Agents said: "The Tenant is constantly disturbing the tenant below; and as well, the Tenant had two cars without insurance and took five parking spots without authorization."

**PARKING ISSUE**

The Tenant said: "I've been here for six years. Nobody pays for parking, except the new people. The reason why I moved in is because they gave me so many parking spots."

I note the Tenant also agreed that he moved into the rental unit in June 2015; therefore, at the time of the hearing, the Tenant had lived in the rental unit for less than five years, rather than six.

The Landlord submitted a copy of the tenancy agreement that was signed and initialed by the Tenant. In clause five of the tenancy agreement, it states: "Basic living space \$ 895.00 plus Parking or Other \$ 0.00 Total \$ 895.00 until official yearly anniversary of rent increase, on the 1<sup>st</sup> day of June 2016 (month) and/or until other increases as permitted."

Clause 19 of the tenancy agreement states:

- 19. STORAGE** . . . Only vehicles listed in the tenancy application and no other vehicles may be parked, but not stored, on the residential property. The parking areas are to be occupied by vehicles which are in operating condition, currently licensed, and insured for on-road operation. Motor vehicles or other repairs must not be done in the Tenant's premises or on the residential property.

Neither Party submitted a copy of, nor referred to the tenancy application.

Clause 27 of the tenancy agreement states:

- 27. COMMON AREA** The Tenant shall not abuse common areas of the building, but shall use them prudently, safely and equitably; and shall conform to all notices, rules and regulations posted on or about the building concerning the use of common areas, including the use of laundry room, play areas, swimming pool, parking area, and storage, and including restriction on use by children. All such use shall be at the risk of the Tenant or his guests.

Clause 31 of the tenancy agreement states:

- 31. RULES AND REGULATIONS** The Tenant agrees that the Rules and Regulations delivered with this Agreement and such reasonable variations, modifications, and additions, as from time to time be made by the Landlord, and

any other further reasonable Rules and Regulations that may be made by the Landlord and communicated to the Tenant in writing shall be observed and performed by the Tenant, his occupants, and guests , and such Rules and Regulations shall be read as forming part of the terms of this Agreement . The initials noted in this Agreement are made by the Tenant.

The Agent, K.S., who was the building manager at the time the Tenant moved in said: "There was nothing said about the parking. I didn't give the parking for free. There was nothing on the paper and nothing verbal said."

The Agent, T.M., said:

What we have is that in the Tenant's rent increase notice - he's paying for only one parking spot. But for five he didn't. His rent is \$992.24 for one parking spot. That is the parking agreement he signed. He is eligible for and pays for one parking spot. He's not eligible to move parking spots wherever he wants. For these three years I started having conversations with him with this parking. All the time, unrespecting response. This is the first time I called the colleague manager into a hearing. Did he actually give him 5 parking spots for free? No. We are charging the tenants \$25.00 per parking spot.

The Tenant said:

When I moved in, they knew I sold cars. Nobody complained until now. In the rental agreement it says free parking. They verbally told me it was against the law and that they didn't give me five spots, but the cars have been there for six years. They just want to kick me out to raise the rent.

The Agent, T.M., said:

I had with him many conversations, and my property manager did, regarding the parking spots. We didn't take any action because he was very sick and it was a very stressful time for them, as his wife passed away. I know that that was very stressful. I knew that she was having chemo. But I was speaking with him verbally that he can't have five parking spots.

I know he's complaining about why we're just complaining now, he told me 'that's my parking spot.' But he uses five of them. I cannot control this situation anymore; that's the reason I gave him One Month Notice

The Tenant said: "They've known I have had five cars all along. You need to be served three times. They verbally told me that it was against the law. They never did take me to court. It's a highway trap. I didn't receive the notices."

The Agent submitted a notice she said was given to the Tenant dated November 20, 2019, which states:

With this letter, as the Landlord Representative, I am letting you know that you are breaching tenancy agreement, stored 2 vehicles in the garage, without paying the parking and without parking agreement. As well you are not allowed to use 5 parking spots without paying for it and to park on parking spots that are in use for other tenants, who is paying for that parking spot.

Other vehicles listed in the tenancy application and no other vehicles may be parked, but not stored, on the residential property. The parking areas are to be occupied by vehicles which are in operating condition, currently licensed, and insured for on-road operations.

Please be reminded that clause 19. Conduct, of your Tenancy agreement, clearly explains rules in regards to this matter.

You have until December 1<sup>st</sup> to remove your cars, to sign parking agreement if you need underground parking.

\*If we receive any further complains we will have no choice but issue Eviction notice accordingly.

If you need additional information don't hesitate to contact [telephone number].

Sincerely,

Resident manager

[T.M.'s signature]

November 20, 2019

[emphasis in original; reproduced as written]

### **NOISE ISSUE**

The Agent, T.M., said:

I had the [noise] problem since November [2019]. The tenant below him starts to hear slamming doors and noisy music – drums. He complained that it is the same song and it is going on during the night. It was noisy later than 11 p.m. I gave him a warning notice and I checked the tenants [around him]. Whenever it is night time, I'm not coming to check; I can't come in the building to check, because I live away from the building. Unit 306 said he didn't hear any music, but the tenant in #206 said there was music, but it wasn't disturbing him. Then later I'm receiving more complaints from #205 – just under the Tenant. We gave him two notices for noise complaints. I spoke with him over the phone, but he didn't fix anything. I had more complaints a few nights ago.

The Tenant said:

I go to bed at 11 o'clock. She texted me in the afternoon. Now it's 11:30; I don't play drums; the guy next door plays drums. She doesn't have proof that it was coming from my suite. Anyone can say anything. Why isn't the complainant on the line? My wife was deaf, and the TV was blaring before, but now I get a noise bylaw. There's only one guy complaining, but he's paranoid that I'm watching him. It's all lies. I'm in bed every night at 11:00. I have a heart condition. I'm up at 6:30 in the morning.

The only notice was a 2:00 p.m. text to 'please play your music lower' – that the music was too loud.

The Agent, T.M., said she may have texted the Tenant in the afternoon about the noise complaints, because that was when she was at the office to address complaints from the prior evening(s).

The Agent also said that now that the Tenant is by himself, he's: "...started having people coming and going from his unit more frequently, that the noise includes slamming doors. I could understand that it is stressful in this difficult time, but from 11:00 p.m. to 7:00 a.m. ["Quiet Hours"] it should be very quiet. It cannot be loud so that other tenants are bothered by it."

In addition to communicating the noise complaints via text, the Agent said that she has given the Tenant notices to stop making the noise, which are dated: November 15, 2019, and December 5, 2019. The November 15, 2019 notice states:

With this letter, as the Landlord Representative I received complaining notice regarding the noise at the night time.

Residing in the address as above, that you have breached the Tenancy Agreement by making a noise during a night time, that was causing 'Loss of Quiet enjoyment' for your neighbours.

Please be reminded that clause 15. Conduct, of your Tenancy agreement, clearly explains rules in regards to this matter.

\*If we receive any further complains we will have no choice but issue Eviction notice accordingly.

If you need any additional information don't hesitate to contact [telephone number].

Sincerely,

Resident manager

[signature]

November 15, 2019

[reproduced as written]

The noise notice dated December 5, 2019, had essentially the same information as that of November 15, 2019.

Clause 15 of the tenancy agreement states:

- 15. Conduct** In order to promote the convenience, safety, welfare and comfort of other tenants in the building, the Tenant and guests of the Tenant shall not disturb, harass, or annoy occupants 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 p.m. and 9 a.m. Any tenant who causes other occupants to vacate the premises because of noise or other disturbance, harassment, or annoyance, shall indemnify the Landlord for any reasonable costs and losses caused thereby, and may have the tenancy terminated on short notice pursuant to the Act.

The Agent submitted texts she said she received from the tenant living below the

Applicant, which state:

Sat, Dec. 28, 11:40 PM

Started playing his same old  
Banging drum song up right at  
11 o'clock again let you know  
What time he stops

Still going here and there at 11  
36 pm

He does it in small spirts off  
and on just to bug me

He did the garborator then  
does his small spirts of drums  
anyways it's after 11 pm  
enough texting for the night

Getting louder on the drums  
What an asshole

I will speak with my manager on  
Monday regarding this

Thursday 11:30 PM

It's after 11 pm and he is  
starting the drum music right  
when I turn in for the night it  
seems he is spying or watching  
me every night he knows what I  
am up to all the time kind of  
strange don't you think I will  
come in and make a report  
tomorrow and when he  
threaded me a little while ago  
as well enough is enough this



guy has no respect

[reproduced as written]

The Tenant said:

They have no proof. If they had proof, they'd have the guy below me that makes the complaints on the phone. I live with all kinds of noise around me, yet my TV is too loud.

They never phoned me at 11 o'clock, never gave me no notice of playing drums to irritate. I don't have drums. The guy next door had drums. Most tenants say I'm the best neighbour. The only one is the guy below who goes in and out his sliding door all the time.

Been here for six years and all of a sudden, all these notices. Yes, verbally I talked to her. I'll get parking insurance, everything she wants. I'm a good tenant. They have no proof, just like the guy complaining about my TV all the time. I should be the one complaining but I'm not.

The Agent said: "I would like to say that I disagree that he didn't receive paper notices. Whenever I gave him a notice, he right away called me to discuss it, so I know that he received them."

### Analysis

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

Section 47 of the Act allows the landlord to end a tenancy for 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,

. . .

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

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.

In this case, I find that the Landlord has the burden of proof on a balance of probabilities to provide sufficient evidence to support the validity of the One Month Notice.

### **PARKING ISSUE**

Neither Party provided any documentary evidence that the Tenant is allowed to park five vehicles in the common parking area of the residential property. The Tenant's argument is that the Landlord acquiesced in regard to the multiple vehicles that he has parked there for the duration of his tenancy, and that "nobody complained until now." However, I find this is inconsistent with the evidence before me that the Parties had repeatedly discussed that the Tenant was not allowed to park five vehicles in the common parking garage. Further, clause 27 of the tenancy agreement says that the Tenant agrees to use the common areas, including parking, "equitably". Also, the Tenant said the Tenant says he has "free parking", however, he did not direct me to where in the tenancy agreement that it says this.

The Agent said that they held off with enforcement proceedings, because they felt sorry for the Tenant and his wife when she was going through cancer treatment. I find that it is more likely than not that the Tenant understood that he was not allowed to park five vehicles in whatever spots he wanted in the residential property parking facility, given the conversations he had had with the Agents in this regard.

I find that on November 20, 2019, the Landlord communicated in writing that the Tenant was not allowed to do this, which communication included setting out the consequences to the Tenant. This notice said that should the Tenant not remedy the problem by removing the excessive number of vehicles from the residential property, that he was

liable to be evicted.

I find that the Tenant's behaviour in this regard demonstrates that he has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property by parking in other tenants' spots without authorization. I find that this behaviour authorizes the Landlord to evict the Tenant for cause, pursuant to section 47 of the Act. I, therefore, find that the One Month Notice is valid in this regard, and I find that it is consistent with section 52 of the Act, as to form and content.

### **NOISE ISSUE**

Section 28 of the Act addresses tenants' right to quiet enjoyment of the premises:

#### **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:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- ...
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

A landlord is required by the Act to take steps to ensure that a tenant's right to quiet enjoyment is protected. I find that the Agents in this case took such steps on behalf of the tenant who lives below the Applicant's rental unit ("Complainant").

The Applicant acknowledged that he had discussions with the Agent about this matter. As noted above, he even said: "...just like the guy complaining about my TV all the time." Further, the Tenant spoke of a number of notices having been attached to his door from the Landlord. Based on all the evidence before me, overall, I find it more likely than not that these notices included those outlined above, which warned the Tenant of the consequences of continuing to be noisy during the Quiet Hours. The Agent's evidence is that the noise complaints have continued up to a few days prior to the hearing.

The Tenant said that the Agent did not have proof, because the Complainant was not a witness in the hearing. However, the Agent submitted text messages she received from the Complainant, which corroborate her version of events and substantiate the verbal

and written warning notices that were given to the Tenant.

When I consider all the evidence before me overall, I find that the Agent has provided sufficient evidence to meet her burden of proof on a balance of probabilities and to support the validity of the One Month Notice. I find that the Tenant significantly interfered with or unreasonably disturbed another occupant of the residential property. I also find that the One Month Notice complies with section 52 of the Act as to form and content. I dismiss the Tenant's Application and I confirm the One Month Notice.

Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession.

### Conclusion

The Tenant is unsuccessful in his Application to cancel the One Month Notice. I dismiss the Tenant's Application, as I find that the One Month Notice is valid and I confirm it.

Given that the effective vacancy date in the One Month Notice has passed, and pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is 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: March 09, 2020

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Residential Tenancy Branch