



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling a One Month Notice to End Tenancy for Cause (Notice).

The tenant, the tenant's advocate, and the landlord's agents (agent) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The tenant confirmed receiving the landlord's evidence. The agent said they received the one page document they referred to as a petition. The tenant's other evidence was a copy of the Notice.

Thereafter all parties were provided the opportunity to present their affirmed testimony and to refer to relevant documentary and digital evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters-

During the course of the hearing, the tenant's advocate made a submission arguing the validity of the Notice served on the tenant.

The advocate said that the Notice was on a Residential Tenancy Branch (RTB) form from 2016, and not on the current form available on the RTB website. The advocate said that this created confusion with the tenant, due to the recent Covid-19 restrictions on evictions in place, as well as invalidating the Notice as it was not on the approved form.

The agent said the form they delivered to the tenant was the only form available on the RTB website at the time they required the Notice.

I do not accept the advocate's submissions. I have reviewed the 2016 Notice and compared it with the current form and find that the 2016 Notice was on the approved form from the RTB. Further, I have reviewed the form and content of both Notices and find the content is substantially the same. The primary difference is the layout, with the current form being a computer "autofill" form.

Both forms offer information for tenants and landlords, and the tenants are advised of the timelines in which to file an application in dispute of the Notice.

The causes under section 47 are listed on both forms, with "tick" boxes, and there is a space for writing out the "Details of the Causes" on both forms.

Both forms have the parties' names, their addresses, contact information, the landlord's signature, date signed, and the effective date.

I do not find the layout of the form invalidates the Notice.

Under section 62 (2) and 68 (1), I find that the Notice issued to the tenant was in the proper RTB form and had the content required by section 47.

The hearing proceeded on the accepted Notice.

#### Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support their Notice or is the tenant entitled to an order cancelling the Notice?

### Background and Evidence

The undisputed evidence is that this tenancy began on July 1, 2016. The rental unit is in a multi-story, multi-unit building, occupied by other tenants of the landlord.

Both parties provided a copy of the Notice, which shows that it was dated on July 16, 2020, for an effective move-out date of September 1, 2020. The undisputed evidence was that the Notice was served by personal service on July 16, 2020. The tenant's application was made on July 22, 2020, within the required timeline.

The reasons stated on the Notice to end tenancy were:

- the tenant has allowed an unreasonable number of occupants in a rental unit;
- 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
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has;
  - (ii)adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property

### ***The agents provided the following testimony and references to their documentary evidence:***

Agent MT said he has received numerous complaints from a number of other tenants in the building. Specifically, MT said that he has heard about furniture and garbage being thrown out of the tenant's window, that there was screaming and fighting between the tenant and her son being heard at high levels.

MT said that the other tenants were nervous and scared, and emotions were exacerbated by the effects of Covid-19.

MT said the final straw was when the police and a SWAT came to the rental unit, with guns drawn, and escorted the tenant's son off the premises, while handcuffed.

Agent CM testified about the day the police and SWAT arrived at the residential property. CM, who lives in the residential property, said that she was unaware the police were present until she received an email from a prospective tenant who had arrived for a viewing. The prospective tenant ultimately declined to visit the property or to become a tenant, due to the police incident, according to a copy of the email submitted by the landlord.

CM said the police came with their guns drawn and escorted the tenant's son out of the building, as shown by their video submitted into evidence. The date of the incident according to the video was July 12, 2020.

CM said that she kept giving the tenant repeated written notices warning the tenant she had to correct the situation with her son. Filed into evidence were copies of the written notices.

One notice, dated April 21, 2020, informed the tenant CM received a complaint about the yelling from the rental unit, that the tenant's son was overstaying the two week time limit for a guest's visit, and that the tenant's son had been using the fire door to exit the building, in an apparent attempt to avoid CM. The letter also asked the tenant to find her son an alternative place to live.

Another notice to the tenant, dated May 12, 2020, informed the tenant that the agent was receiving many complaints about the tenant and her son's behaviour. The notice informed the tenant that her son had extended his stay to 1.5 months and warned the tenant that her son was putting her tenancy at risk. This letter acknowledged that the landlord was unable to evict the tenant during the emergency period, but that due to the Covid-19 restrictions, more people were at home, further disturbing other tenants.

Another letter to the tenant was from another named tenant, asking CM to ask the tenant to keep the noise down to a "dull roar", as he worked extra long shifts at the hospital.

The landlord submitted a copy of an email, dated June 27, 2020, from another tenant informing the landlord that they saw garbage being tossed off the deck, trying to hit the dumpster.

Another notice from CM to the tenant was dated June 28, 2020, informing the tenant that another tenant called to report that garbage and chairs were being thrown off the tenant's balcony, which could hurt someone walking out of the building.

The landlord submitted other warning letters to the tenant, and in particular, giving the tenant to the end of July 31, 2020, to have her son move out of the rental unit. CM said that she taped each notice to the tenant on her door, with the date and time listed and with a witness. The landlord submitted copies of the photographs with the letters attached to the tenant's door.

The landlord submitted copies of written complaints from other tenants.

***The tenant provided the following testimony in response to the landlord's application and evidence:***

The tenant said that she did not receive the written notices taped to her door, but only received one on July 1, 2020.

The tenant testified that everything was exaggerated by the landlord and she had neighbours who would vouch for her.

The tenant testified that her son was nice and did not get into trouble, but he was stressed over not being able to find a job or an affordable place to live. The tenant said her son suffered from a bi-polar disorder.

The tenant said she was the one who called the police on her son, as he was threatening her with a baseball bat, making her scared. The tenant said that her son had never been in trouble, but emphasized that he has been stressed.

Analysis

Section 47(1)(d)(i) of the Act authorizes a landlord to end a 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.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

Section 28 of the Act states that all tenants are entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the Act; use of common areas for reasonable and lawful purposes, free from significant interference.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The landlord said that the tenant and her occupant, her son, had been making consistent and excessive noises in her rental unit for a number of months, many which occurred during the state of emergency declared in reaction to the Covid-19 pandemic when landlords were prohibited from issuing eviction notices.

In addition, the landlord submitted that the tenant and/or her occupant were seen throwing garbage and furniture from their balcony.

The landlord's evidence showed that the tenant was given multiple written warnings about her and her son's behaviour, yet the landlord kept receiving complaints.

The tenant denied receiving the written warnings.

In assessing the credibility of the parties, I find the tenant's denial of receiving the written warnings to be self-serving and not convincing. I, however, find the landlord's agent provided consistent, compelling, and persuasive evidence that the tenant was served with the written notices when they were posted on the door, listing the date and time, along with a witness. The forthright testimony was backed by photographic evidence. I find on a balance of probabilities the tenant was sufficiently served the written notices and the tenant and son's behaviour never improved.

More egregiously, the police SWAT was called to the residential property and, with guns drawn, the tenant's son was handcuffed and escorted out of the property.

I find a reasonable person would be unreasonably disturbed by police being called to the residential property in this situation. Further, I find the evidence clearly shows that the tenant and her son have seriously impacted the quiet enjoyment of the other occupants of the residential property, for an extended period of time, for which she received written warnings.

I further find the landlord's evidence showed they warned the tenant to remove her son from the rental unit so that her tenancy was not put in jeopardy, and yet, she chose not to.

I find the landlord was left with no choice but to issue the tenant the Notice, to preserve the quiet enjoyment of all their other tenants.

Given that I find the landlord's agents' testimony and documentary evidence to be credible, I find the landlord has submitted sufficient evidence to prove on a balance of probabilities that the tenant or a person permitted on the residential property by the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

As I have found the landlord has proven at least one of the causes they listed on the Notice, it was not necessary to consider the other listed causes.

### Conclusion

I dismiss the tenant's application requesting cancellation of the Notice, without leave to reapply, as I find the One Month Notice valid, supported by the landlord's evidence, and therefore, enforceable.

Under Section 55(1)(b) of the Act, if a tenant's application to cancel a Notice has been dismissed, I must grant the landlord an order of possession.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective **September 1, 2020, at 1:00 p.m., the effective date of the Notice.**

The order of possession is included with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon her, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is cautioned that costs of such enforcement, such as bailiff fees, are recoverable from the tenant.

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: August 28, 2020

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Residential Tenancy Branch