



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Greenaway Realty  
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 pursuant to sections 47 and 55.

Both the tenant and the landlord attended the hearing. The landlord was represented by CG ("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 landlord noted that the tenant misspelled her name when filing her Application for Dispute Resolution. In accordance with section 64(3), the Application for Dispute Resolution is amended to reflect the proper spelling of the landlord's name.

### Issue(s) to be Decided

Should the notice to end tenancy be upheld or cancelled?

### 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 landlord gave the following testimony. This month to month tenancy began on November 1, 2018 when the rental unit was managed by a different property management company. Rent was set at \$754.00 per month payable on the first day of the month. A security deposit of \$362.50 was collected by the landlord which the landlord continues to hold.

On July 20, 2020, the landlord personally served the tenant with the One Month Notice to End Tenancy for Cause. A copy of the notice and a proof of service document signed by a witness was provided as evidence by the landlord. The effective date stated on the notice was August 31, 2020 and the reason for ending the tenancy stated:

- the 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 a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Details of cause was also provided describing the reasons for issuing the notice.

The landlord testified that on November 21, 2019 she received a written complaint from the resident in unit 104, describing a violent altercation between the tenant and her partner the previous night. The letter describes the tenant *'hitting a guy while screaming at him and calling him names while he was on the ground'*. The time was 12:30 at night. The partner is not a tenant on the tenancy agreement. A copy of the complaint was provided as evidence, as was a description of the incident from the resident manager dated November 20<sup>th</sup>.

The landlord testified complaints about this tenant continued from other residents in the building and on December 2, 2019 the landlord gave the tenant a warning letter, copy provided as evidence. The warning letter indicates a reasonable material term of the tenancy was breached when the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord. The warning letter states the tenant and her boyfriend were yelling at each other at the top of their lungs disturbing multiple tenants in the building. The tenant emailed a response advising the landlord that it will not happen again on December 3<sup>rd</sup>.

The landlord testified that the incidents with the boyfriend continued, each disturbance was recorded by the resident manager. On February 12, 2020, the resident manager recorded yelling at 10:30 p.m., escalating to violence by 11:30. Police were called, and the tenant told the resident manager it wouldn't happen again.

More complaints were made by other tenants in the building regarding the tenant and her boyfriend's disturbances. An unsolicited letter dated March 18, 2020 from another occupant of the building was provided as evidence stating they were fighting and screaming late at night to the point where police were called. The writer continues that he has PTSD and that these incidents have triggered his night terrors.

The resident manager recorded another altercation on June 17<sup>th</sup> where the police were once again called to remove the boyfriend and his child. Similar incidents on July 4<sup>th</sup> and July 10<sup>th</sup> were recorded by the resident manager. The One Month Notice To End Tenancy for Cause was served on July 20<sup>th</sup>.

The tenant gave the following testimony. Every time the police were called, it was because the tenant had called them due to fear for her own safety. When called, the police didn't remove the boyfriend, instead they took him 'upstairs'. The tenant clarified that the boyfriend was staying in the building, though he was not a tenant.

After removing the boyfriend from her apartment by the police, he was allowed to stay there by the police. She told the police that wouldn't work, that the boyfriend shouldn't be allowed to stay 'upstairs', and she took 'every course to get him out' but it was the police who allowed him to stay on the property. The tenant testified the now ex-boyfriend doesn't even live in the province anymore as far as she knows.

At this point in her testimony, the tenant sought to postpone the remainder of the hearing so she could gather further evidence to support her case. I advised the tenant that she, as the applicant to a dispute resolution proceeding, was obligated to exchange her evidence with the landlord and provide me with a copy of it at least fourteen days prior to the hearing in accordance with rule 3 of the Residential Tenancy Branch Rules of Procedure. I denied her application to postpone the hearing.

### Analysis

I find the tenant was served with the One Month Notice To End Tenancy for Cause on July 20, 2020 in accordance with sections 88 and 90 of the Act. The tenant filed to dispute the notice on July 29<sup>th</sup>, nine days later. 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. 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 the reasons identified in the Notice. In the matter at hand, the landlord must

demonstrate the tenant (1) breached a material term of the tenancy which was not corrected within a reasonable time and/or (2) significantly interfered with or unreasonably disturbed another occupant or the landlord.

The tenant's submissions to dispute the landlord's attempt to end the tenancy appear to revolve around the local police and their choice to allow the (now ex) boyfriend to remain on the property after disturbances. I find this argument has no reasonable chance of success. The reason for ending the tenancy was due to the tenant's yelling, screaming and violent behaviour throughout the course of the tenancy, thereby disturbing other occupants of the building, not because the local police wouldn't cooperate in removing the ex-boyfriend.

I find the landlord has provided sufficient evidence to satisfy me the tenant both (1) breached a material term of the tenancy which was not corrected within a reasonable time and/or (2) significantly interfered with or unreasonably disturbed another occupant or the landlord. The landlord has provided substantial evidence, corroborated by letters from other occupants of the building that proves to me, on a balance of probabilities, that the tenant and her boyfriend (at the time) significantly interfered with or unreasonably disturbed other occupants. I also find the tenant was given a written notice to correct the material term of the tenancy November 21, 2019 and the tenant did not do so. In fact, it appears the disturbances with the boyfriend (at the time) escalated. For these reasons, I dismiss the tenant's application to dispute the notice to end tenancy. The notice is upheld.

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 have reviewed the notice to end tenancy and I find it complies with section 52 in form and content. The effective date stated on the notice is August 31, 2020. As that date has passed, the landlord is entitled to an order of possession effective 2 days after service upon the tenant.

### 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: September 03, 2020

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Residential Tenancy Branch