



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Greater Victoria Housing Society 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 July 22, 2020 ("One Month Notice").

The Tenant's advocate, S.M. ("Advocate"), and two agents for the Landlord, Y.B. and R.M. ("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 Advocate and the Agents were given the opportunity to provide their evidence orally and 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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Tenant provided the Landlord's email address in the Application, which the Agents confirmed in the hearing. The Advocate asked that the Decision be mailed to the rental unit for the Tenant, and to the Advocate at his home address, which he provided. The Parties also confirmed their understanding that the Decision would be sent to both Parties, and any Orders would be sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

### 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 April 1, 2009, with a monthly rent of \$296.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$271.00, and no pet damage deposit.

In the hearing, the Landlord confirmed that although the One Month Notice was not signed, it had the Landlord's stamp, and it was dated July 22, 2020. The Agents confirmed that the One Month Notice was served by registered mail on July 22, 2020, has the rental unit address, has an effective vacancy date of August 30, 2020, which is automatically corrected to August 31, 2020 by the Act. The ground for the eviction, as set out on the One Month Notice is that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. The Landlord noted under Details of the Event: "Despite previous warnings about behaviour, the tenant continues to yell, and scream swear words throughout the day and night, seriously disturbing surrounding tenants."

In the hearing, the Advocate said:

My mom has nightmares - she was in a fire years ago. Also, she was in the hospital and she has a brain aneurysm. She has two lumps. And I was with the doctor for about an hour. He said that the brain aneurysm is so close – in a dangerous part of the brain. He told me that . . . that pressure on her brain - she could die at any time. You don't know how she has to live.

She has spent nights at my house and has woken me up. But you can hear everything at her place; you can hear the guy talking in the next unit, and walking down the hallway and walking above. The place is . . . you can hear the guy upstairs.

Her new doctor said 'I think your Mom has dementia'. She's not the smartest rock in the jar.

In the hearing, the Agents said:

We sympathize with her situation, but we were giving her letters as far back as 2016. We issued an eviction notice in 2018. We have tried working with [the local health authority] and [an advocacy organization], who have tried to intervene on the occurrences....Neighbours have said they didn't want her to lose her place. But in 2020, we received notices from two different people who are not coping with this. The Caretaker reports this yelling and swearing all the way down the hall. She can hear it. [The Advocate] is right; there's not a lot of sound proofing, but her behaviour is affecting the other tenants' mental health as well.

The apartment has 50 units on four floors. All her surrounding neighbours have confirmed this, but they can't cope with it.

See the Caretaker's emails – a lot of tenants have come to her about the profanity that doesn't stop. At first, we were told it's the TV. [The health authority person] has stayed there over night and it stopped while they were there, but started again as soon as they left.

If we are successful, we will work with her to give time to find alternate housing.

The Agents submitted emails from the Caretaker to the Agent(s), including the following:

Dated February 14, 2020:

Hello [Agent], I thought you should know that the tenant [rental unit number] has a habit of keeping her suite door open during the day. She yells out profanity, and argues with herself. I have noticed over the past few weeks that this tenants behaviour has been escalating and today has been particularly bad. I just spoke with her asking if she's ok and she said I'm just sitting here waiting for my care worker. I said that's fine but your door needs to stay closed. I closed her door on my way out. Thanks.

Dated February 24, 2020:

Hello [Agent], Tenant [rental unit number] behaviour continues to escalate as she

was swearing up a profanity storm this morning and I could hear it from the office and her door was closed. It was so bad that I did a sound recording of it but it won't attach to this email. I'm in the office tomorrow and will let you hear it. I also just had a tenant hand in an incident report regarding this and I have faxed it to you. Thank you.

Dated April 24, 2020:

This is to inform you that tenant [rental unit number] continues to yell out "Fuck off" very loudly from her suite that I can hear her from the office in the lobby. This morning is especially loud. Thanks.

Dated July 15, 2020:

Good afternoon, today I have had several complaints from tenants regarding tenant [rental unit number] repeatedly screaming fuck off and get the hell out of here etc... They are fed up with it and say that they can't get any sleep or go out on their decks without hearing her.

I hear [the Tenant] every day that I'm working [here] yelling out profanities and it NEVER stops. It echo's down to the lobby where myself, tenants and guests hear it on a daily basis. The tenants want some action in regards of [the Tenant's] behaviour as it is very disturbing to all that hear it. I am faxing in more written complaints from tenants. Thank you.

[emphasis in original]

The Advocate said:

They had someone stay over... she wakes me up in the middle of the night, too. It's nighttime nightmares. Or if she has a nap in the afternoon, she has nightmares.

How long will they give to get her out of her apartment and into another place? It could be a two-year wait period. If they evict her now. . . wait lists. I've been trying to find another place for her to stay. It's hard to find a place to live in the city and the amount of rent - \$400 a month for a small, little suite. And if it's not sound proof in the place....

When asked by the Advocate, the Agents said that if awarded an order of possession:

We would be willing, her behaviour has calmed down some, if that continues, we would be willing to give her until the end of November. She can leave at any time, but we would be willing to give up to November 30, [2020].

The Advocate said:

They were telling me it would be two years to get her into another place. It's pretty hard to put a 70-year-old person out. Plus, [D.] upstairs - whenever I go to my mother's house, he's always out in the hallway. That man has a lot of mental problems. And I've tolerated him.

I have been there a number of times, and the workers – home care - go there six times a day and they don't hear her swearing. They go there to give her one pill. No one wants to get involved and lose their job.

### 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.

Accordingly, I find that the Landlord has the burden of proving the validity of the One Month Notice on a balance of probabilities.

Section 28 of the Act sets out a tenant's right to quiet enjoyment of the rental unit, and states that tenants are entitled to "reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit, subject only the landlord's right to enter the rental unit in accordance with section 29, and use of the common areas for reasonable and lawful purposes, free from significant interference." The Tenant's neighbours are entitled to quiet enjoyment of their suites and the Landlord is required to ensure that their quiet enjoyment is protected.

In this case, the Landlord alleged that the Tenant significantly interfered with or unreasonably disturbed her surrounding neighbours, all the way down the hall to the lobby and Caretaker's office, with repeated yelling, swearing, and other profanities.

Based on all the evidence before me overall, I find on a balance of probabilities that the Tenant has, in fact, done as the Landlord has alleged. I find that the behaviour has been going on for years, and that the Landlord has warned this Tenant to control her behaviour. While the behaviour may be out of the Tenant's control, the Landlord has a duty to protect the quiet enjoyment of the other occupants of the residential property. I find that the Landlord has provided sufficient evidence to meet their burden of proof on a balance of probabilities, and to support the validity of the One Month Notice.

I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act as to form and content. Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession, and I, therefore, grant the Landlord an Order of Possession, effective November 30, 2020, pursuant to the Agents' consideration in this regard.

### Conclusion

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

confirm it.

I grant the Landlord an Order of Possession effective November 30, 2020. 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: September 09, 2020

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Residential Tenancy Branch