



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated July 28, 2020 ("One Month Notice").

The Tenant, M.A., the Landlord, and the Landlord's daughter, R.G., her agent ("Agent") 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. One witness for the Landlord, H.G., also provided affirmed testimony at the hearing.

During the hearing the Tenant and the Landlord 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 Parties confirmed their email addresses at the outset of the hearing, as well as confirming their understanding that the Decision would be emailed to both Parties.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the application and if the notice to end tenancy is compliant with section 52 of the Act, as to form and content.

Where people have been quoted and cited throughout this Decision, I have reproduced their statements as originally written or stated by the respective person(s), other than to hide personal identities.

### Issue(s) to be Decided

- Should the One Month Notice be confirmed or cancelled?
- Is the Landlord entitled to an order of possession?

### Background and Evidence

The Parties agreed that the fixed term tenancy began on February 1, 2018, and ran until February 1, 2019. The Parties said they then executed another one-year tenancy that ended on February 1, 2020. From that point forward, the tenancy operated on a month-to-month basis.

The Parties agreed that the Tenants pays the Landlord a current monthly rent of \$1,230.00, due on the first day of each month. They agreed that the Tenants paid the Landlord a security deposit of \$600.00, and a pet damage deposit of \$100.00.

The Landlord confirmed in the hearing, which was supported by her documentary evidence, that she served a One Month Notice on the Tenants in person on July 29, 2020, with an effective vacancy date of August 31, 2020. The grounds checked off for issuing the One Month Notice were because:

The tenant(s) or a person permitted on the property by the tenant(s) has:

- Significantly interfered with or unreasonably disturbed another occupant or the Landlord,

In the hearing, the Agent directed my attention to a letter the Landlord wrote about the reason why she served the One Month Notice. This letter includes the following:

August 22, 2020

Residential Tenancy [Branch]

I, [J.G.] have lived at my home [residential property address] for 13 years. I have positive interactions with my neighbours and tenants.

In January I contacted the tenancy board to request help in resolving some issues with my downstairs tenants, [M. and D.A.]. The RTB advised me that verbal abuse, foul language and aggressive behaviour on an ongoing basis are grounds for eviction. The RTB advised me that the storing of accumulated recycling and garbage from the neighbourhood (section 32) were grounds for a notice to vacate. The RTB recommended that I serve the [Tenants] a letter of warning, and give them an opportunity to rectify the situation.

Since this letter was served in January there have been plastic garbage bags full of recycling stored behind the garden shed.. . . The trampoline frame has been taken down but is still stored in the yard. There [are] other items that appear to be broken or non-functional stored along the side of the house.

Since the letter of warning was given to [M. and D.A.] in January there have been many incidents of verbal abuse, violent language and aggressive behaviour.

In April I was working in my garden and the [Tenants'] cat was digging in the garden damaging my plants. [D.A.] was also in the yard. I asked him to please move the cat out of the garden. He picked up the cat and said, 'You're fuckin' insulting my cat.' He said many other words of anger, accusing me of being a racist.

Last week I was watering the flowers on the back porch, [D.] stood on the grass shouting, using bad language. It is not ok for him to yell at me or swear at me.

Almost any interaction I have with Mr. [A.] involves him using the 'F' word and shouting at me.

. . .

At the time of first meeting [M., D.], their young son, and a baby on the way, I felt compassionate of their plight and what seemed to be a rough time they were going through. When I found out that they had an older daughter they had not mentioned, I let it go. When they asked to have a cat in my pet free home, I accommodated their request. When [M.] yelled at me, I let it go. What I am no longer willing to put up with is the constant verbal abuse from [D.A.]. I am not willing to put up with cigarette smoke on my property. I am not willing to put up with garbage being stored on my property. As you can see from the statements from the neighbours, [D.'s] aggressive behaviour is a big problem. I have done my best to amiably resolve the issues but the [Tenants] have not responded.

[M.'s] letter says that the trampoline was removed. It is still sitting outside my window.

My neighbours complain to me about the yelling and foul language that they are forced to hear on a regular basis. They complain about the aggressive behaviour of [D.].

...

I have followed the RTB guidelines in giving notice to vacate. I would like to see this enforced.

[signature]

Thank you, [J.G.]

In the hearing, the Agent said that the Tenants have rectified the recycling problem; however, she said other “stuff” remains stored around the residential property, which the Landlord has asked them to remove. I also note that the Tenant said that many items stored around the property do not belong to the Tenants and that she does not know their origin.

The Landlord submitted letters from neighbours, whose comments included the following from the witness, H.G., who the Landlord said lives immediately to the right of the residential property:

On May 26 2020 I went to put some recycling into the recycling bin in the front of [the residential property]. We have an arrangement that this is ok on the days of pick up. The male tenant came over and started yelling at me. He called me a fucking racist bitch. He told me I could not put anything in the bin. I tried to explain that the landlord ([J.G.]) and I had an arrangement. He was yelling so loud and being very aggressive. He stood so close in front of me yelling. I was worried that he was going to hit me. I walked away and he followed me. He continued to yell and swear when I was inside my house. I was shaking and crying. I felt threatened. I called 911 and the police came. The police took my report and then spoke to the downstairs tenant [D.A.]. The police file # is....

The next day [D.] asked my husband if his children could come over to our house and play. My husband said that normally he would say yes, but after how he had treated me the day before, it was not a good idea. [The Tenant] started swearing and yelling in front of his children and ours. He said to my husband, ‘you are a fucking trash face’ and many other profanities.

This neighbour's letter went on for another five paragraphs detailing similar behaviour from both of the Tenants.

The Landlord submitted a letter from the neighbour, H.S.S., who she said lives immediately to the left of the residential property. This letter included the following:

I have lived at [this address] for 12 years. I live next door to [the Landlord]. We have a very nice neighbourhood. Everyone is polite and nice.

[The Landlord] has tenants in her downstairs suite. I have had to physical attacks from [D.A.] this year. I was asking [D.] not to smoke on my property. He started to swear at me. He yelled very loud and became angry. He was about to hit me when Mr. [P.] came running over from across the street. He quickly got in front of me. He blocked [D.] from hitting me. I was recovering from open heart surgery and being hit could have been very dangerous for my health.

The other time [D.] threatened to hit me and was angry and yelling bad language. A man on a motorbike saw and stopped. The man talked to [D.A.] and calmed him down. I went quickly into my house.

I live right beside [the Landlord] and have heard [D.] swearing and yelling at [the Landlord]. The language is very foul. There are children nearby listening. It is not nice to hear for anyone. [The Landlord] lost her husband not too long ago. I feel very bad to see this sort of abusive behaviour from the tenant.

...

I do not feel safe for me or my neighbours with [a] violent angry person yelling and screaming. I avoid seeing him. I do not want to be threatened or hit. I would very much like this to stop.

Please call me if you have any questions.

[signature]

[H.S.S.]

The Tenant said the following in the hearing:

First, I would like to say that my husband is here in the other room watching the children, that's why he's not a part of this. Basically, I would like to talk about the photos that are submitted as evidence. I uploaded a video and in there I pointed out stuff that was mine and what wasn't mine. A number of these photos – item 5

has five pictures; number 4 – that is not my stuff and has been here since the day I moved in. Item #3 is a bunch of wood that is left over from [the Landlord]. I have no idea where this wood came from. It is not mine. I have no reason to collect rotting wood. Re pictures in #2 and #5 and #1 – all the same area, the south side of the house. I admitted what is mine, the bicycle and the trailer that goes on top of the car is mine. Everything else is not mine. In the picture there's an ironing board. I don't have an iron. That is all her trash that has been there for years. Other than what I told you, I don't know where it came from.

Yes, the trampoline frame is still there, because of Covid. It was a whole, functioning trampoline, but [the Landlord] wouldn't let us put it up. It was in the middle of winter; it was difficult to move it. The metal frame from the trampoline - I haven't been able to get rid of it. The legs and the circle part of the trampoline; it is already dismantled, but the legs I just need to get rid of. You see in the photos that it's not a lot of metal, but it's pretty heavy, so it can't be taken to a recycle depot. See it in video #3.

When asked about the allegations of her husband yelling and swearing, the Tenant said:

There has been incidents, but my husband – I'm not going to make excuses. But he is a man's man and a construction worker. He swears quite frequently, but it is not meant to insult anyone, but he will say, 'the f'ing trampoline', he's just... he swears because that's the lifestyle he's used to working in - construction and with guys. But yes, there have been incidents where there have been outbursts. He has grown up in [this city], and he knows the language.

She screams and yells and swears in Hindi. There was an armoire with no drawers outside. She told me I could store the dirty work clothes there, so they don't have to come in the house. There was ants upstairs.... She came out and grabbed the armoire and knocked it over and nearly hit my son, but it hit the stroller rather than my son.

There have been numerous outbursts where [the Landlord] has yelled at my son 'Shut up'. To be honest, when we first moved in, it was fine. He even built her garden beds. I massaged her legs. He cleaned out the apartment next door. But [the Landlord] can't even be bothered to know my name. She even calls [D.] Daniel. There's all kinds of restrictions. I'm not allowed to let my kids shower after 8:30 in the evening or longer than 10 minutes, or we'll have to pay for water. We used to mow the lawn and she doesn't say thank you. You start to feel like . . .the

relationship went from good to bad, but it's been on both parts. We got tired of it. He works 12-hour shifts, so he can't do the lawn anymore. My kids can't play on the lawn because he doesn't mow it.

Like I said, that letter was given to me in January and I thought everything was fine. 'If it is not taken care of by January 28, 2020, it may result in a notice to vacate.' Six months have gone by. I thought everything was fine and then I get the eviction notice.

The Agent said: "First, my family works in construction, as well, and we never heard profanities from them. The children shouldn't be exposed to it." She also said:

Some of things she is saying may be due to a language barrier. My mother has a lot of affection for the children. She thinks they're adorable children. She has nothing against Mrs. [A.].

It's Mr. [A.] It a non-smoking house, so [M. and D.] smoke regularly on the property. When I'm visiting, I ask nicely, 'could you please not smoke on the property. I have a serious allergy'. I visit my Mom more often, as she's aging.

[D.] lights a cigarette in the back and walks around. I can tell when he's smoking a cigarette or pot. There are times that my Mom asks him not to smoke, and he puts his head in the car and says he's not on our property. I think you are a lovely human being; it's your husband who has an anger management issue. I do wish you well.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the 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, the Landlord and the Agent alleged that the Tenant, D.A., yells at the Landlord and at neighbours in an aggressive manner, while using profanities. The neighbours have indicated that they and their children are afraid of D.A. and try to avoid going out if he is present. I find that this was the primary cause of the eviction notice.

When I consider all the evidence before me overall, I find that the Landlord 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, D.A.'s, behaviour is unacceptable in a civilized neighbourhood, and significantly interferes with and unreasonably disturbs the landlord, other occupants, and the neighbourhood, generally.

I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act, as to form and content, 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.

As the effective vacancy date of the One Month Notice has passed, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants.



### Conclusion

The Tenants are unsuccessful in their Application to cancel the One Month Notice, as the Landlord provided sufficient evidence to support the validity of the One Month Notice. I dismiss the Tenants' Application wholly, as I find that the One Month Notice is valid and effective as of August 31, 2020.

The Landlord's claim for an Order of Possession is successful, as the Tenants repeatedly and significantly interfered with or unreasonably disturbed the Landlord, other occupants and the neighbours of the residential property.

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 Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible.

Should the Tenants 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 16, 2020

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Residential Tenancy Branch