



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNC, FFT**

### **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; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The applicant/tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord acknowledged being served with the tenants' Application for Dispute Resolution Proceedings Package, however testified she did not receive the tenants' evidence.

Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply. Rule 7.4 states that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend to present evidence, any written submissions supplied may or may not be considered.

This hearing proceeded in the absence of the tenant in accordance with rule 7.3..

Issue(s) to be Decided

Should the landlord's One Month Notice To End Tenancy for Cause be upheld or cancelled?

Can the tenant recover the filing fee?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The fixed, one year tenancy began on April 1, 2020 with rent set at \$1,100.00 per month. Attached to the tenancy agreement is an addendum whereby the landlord and tenant agree to:

1. No drugs
2. No smoking on the property
3. No parties
4. ...(3 more unrelated terms)

The landlord gave the following testimony, none of which was disputed by the tenant. The upper unit of the single, detached home is rented to another set of tenants who have complained about this tenant's smoking of cigarettes and cannabis as well as noise complaints and disturbances late at night and into the morning hours.

Right from the beginning of the tenancy, the tenant began to breach the terms of the tenancy agreement with excessive noise, screaming and music blaring. On May 8, 2020, the landlord gave the tenant a formal complaint and warning letter describing unreasonable noise from 3:45 a.m. to 5:00 a.m. from two nights prior, which disturbed the use and quiet enjoyment of the tenants in the upper unit. A copy of the letter was provided as evidence. A chronological letter of disturbances from the upper unit tenant was also provided as evidence. The May 6<sup>th</sup> incident reports the tenant being woken up at 3:45 a.m. to the sounds of sex, loud enough to wake her and keep her awake despite trying to sleep with headphones and playing music. Several more instances of being disturbed by the tenant were documented by the upper unit tenant, none of which were disputed by the applicant/tenant in these proceedings.

The landlord testified that she served the tenant with a One Month Notice To End Tenancy for Cause by posting it to the tenant's door on August 21, 2020. This was witnessed by her sister. The landlord knocked on the tenant's door right after posting the notice to the door and saw the tenant remove it and take it into the house.

The tenant only provided the first page of the 3 page notice as evidence. The notice is dated and signed and provides an effective date of September 30, 2020. The landlord

gave verbal evidence as to the contents of the other 2 pages. On page 2, the landlord testified she chose the following reasons for ending the tenancy:

1. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

Under details of cause on the third page, the landlord recounted each of the incidents noted by the upper unit tenant in her letter, in chronological order.

After being served with the notice to end tenancy, the tenant filed his Application for Dispute Resolution on August 30, 2020.

### Analysis

I find the tenant was served with the notice to end tenancy on August 24, 2020, three days after being posted to the tenant's door on August 21<sup>st</sup>, in accordance with sections 88 and 90 of the Act. 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. I find the tenant filed his Application for Dispute Resolution within 10 days, as required by section 47 of the Act.

If the tenant files the application, the landlord bears the burden to prove on a balance of probabilities, the grounds for the 1 Month Notice. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that when the landlord gave Notice to the tenants, the tenancy should be ended for the reasons identified in the 1 Month Notice.

The landlord gave **undisputed** testimony, supported by corroborative evidence from the upstairs tenant regarding the validity of the grounds for ending the tenancy. I am satisfied that the tenant repeatedly disturbed another occupant of the residential property by making incessant noise during the night and early hours of the morning thereby disturbing that occupant's quiet enjoyment. I find the multiple incidences described by the landlord satisfactory to justify ending the tenancy. For this reason, I uphold the landlord's One Month Notice To End Tenancy for Cause.

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.

Although no full copy of the notice to end tenancy was provided as evidence, based on the landlord's undisputed testimony and her recitation of the contents of the notice to me, I am satisfied the form and content of the notice complies with section 52 of the Act. The landlord is granted an Order of Possession. As the effective date on the notice has passed, the Order of Possession will be effective 2 days after service upon the tenant.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

#### 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: October 13, 2020

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Residential Tenancy Branch