



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CASCADIA APT RENTALS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

CNC, RP, LRE, FFT

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated September 29, 2020 ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to complete repairs to the rental unit, pursuant to section 33;
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent ("landlord"), the tenant, and the "tenant's agent" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 68 minutes.

The landlord confirmed that he was the building manager for the rental unit and that he had permission to represent the landlord company named in this application at this hearing. The tenant confirmed that his agent, who is his girlfriend that lives with him, had permission to speak on his behalf at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

Both parties confirmed that they were ready to proceed with this hearing and they had no objections.

The tenant confirmed receipt of the landlord's 1 Month Notice on September 29, 2020, by way of posting to his rental unit door. Both parties agreed that the notice indicates an effective move-out date of October 31, 2020. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on September 29, 2020.

### Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to complete repairs to the rental unit?

Is the tenant entitled to an order restricting the landlord's right to enter the rental unit?

Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 1, 2012. Monthly rent in the amount of \$1,880.00 is payable on the first day of each month. A security deposit of \$775.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit. The rental unit is an apartment in a multi-unit residential building.

Both parties agreed that the landlord issued the 1 Month Notice for the following reasons:

- *Tenant or a person permitted on the property by the tenant has:*
  - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

- *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:*
  - *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.*

The landlord testified regarding the following facts. The landlord does not have proof of any illegal activity by the tenant, as he did not provide police reports, and is not aware of any criminal charges or convictions against the tenant. The tenant has caused significant interference and unreasonable disturbance to the landlord and other occupants in the rental building. The landlord has received noise complaints from other occupants and on June 9, 2020, the tenant was given a final noise complaint that he would be evicted if the noise continued. The noise and complaints have been ongoing for a long time, prior to June 2020. On June 10 or 11, 2020, the tenant had a party and was then given a previous 1 Month Notice, but it was on an old Residential Tenancy Branch ("RTB") form, so the landlord was given leave to reapply at the previous RTB hearing, in order to use the new correct RTB form. The noise continued through the summer, even though the tenant was given an extension of time after the last hearing. The last written complaint provided by the landlord was on August 25, 2020.

The landlord stated the following facts. The landlord has given the tenant written and verbal warnings. The tenant's neighbours above, below, on both sides, and across the tenant's rental unit have all complained about noise from the tenant, and they have all been living at the rental building for between one and ten years. The noise is "excessive," "extreme," has gotten worse, and is "out of hand." Eight different people from eight different units have complained against the tenant, they do not know each other, they have not planned this against the tenant, and they have all complained on the same date. These people are seniors and people with children. The complaints are so detailed, that they name the song playlist, the band and the time of the loud music. The police have been called multiple times and the noise has escalated. The landlord provided 13 written complaints from the tenant's neighbours to the tenant.

The tenant stated the following facts. On June 9, 2020, the tenant received a warning paper on his door, regarding complaints starting on June 3, 2020. The tenant did not know he was disturbing other neighbours, he did not mean to, especially during the covid-19 pandemic. He got a copy of 13 complaints from the landlord on September 10, 2020. He found out in June and then later in September 2020, that it was a problem. This is a lack of communication with the landlord, who did not tell him for months that there was a problem. The people complaining are new occupants in the building, who moved in March 2020, and they are "exaggerating the reality," as there is noise outside

the rental unit since the tenant lives downtown. The tenant has complained about the occupants living above him, who are causing the noise. A police report from July 16, 2020, a small portion of which was included in the tenant's written submissions, states that the tenant was sleeping during one of the complaints, when the police were banging on the door. The tenant did not provide a copy of the full police report because it is confidential, but he had the full report in front of him during the hearing. The tenant was traumatized by the police "bashing down" his door, has not been able to sleep, and went to see his doctor. The tenant can only sleep for 4 to 5 hours a night.

### Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. The tenant received the 1 Month Notice on September 29, 2020 and filed his application to dispute it on October 9, 2020. Therefore, the tenant is within the time limit under the *Act*. The burden shifts to the landlord to prove the reasons on the 1 Month Notice.

On a balance of probabilities and for the reasons stated below, I find that the landlord issued the 1 Month Notice for a valid reason. I find that the tenant significantly interfered with and unreasonably disturbed other occupants and the landlord. As I have found one of the three reasons on the 1 Month Notice to be valid, I do not need to examine the other reason.

I accept the testimony of the landlord that the tenant caused unreasonable noise and disturbance at the rental unit. I find that the tenant's pattern of behaviour of yelling and playing loud music, particularly during the late night and early morning hours when others are sleeping, has caused significant interference and unreasonable disturbance to other occupants and the landlord. These other occupants cannot sleep or work properly, they complain to the landlord, and the police have been called.

The landlord provided copies of 13 complaints from 8 people living above, below, across, and beside the tenant's rental unit. I find that the tenant is well aware of these complaints, he has been given copies of these complaints, he is aware of the nature of the complaints relating to noise, and he has had repeated warning notices and verbal warnings from the landlord. Despite the fact that some information on the landlord's written complaints were redacted, some complaints had the names and emails of the occupants, so the tenant could see who was complaining against him. Further, the tenant was aware of who was complaining and what units were complaining against

him, as he stated during the hearing, that these occupants had recently moved into the rental building.

The parties had a previous RTB hearing regarding this issue in the summer of 2020, and the tenant submitted evidence regarding same with this application. Both parties agreed that because the landlord used an old RTB form for the 1 Month Notice, the landlord was given leave to reapply and issue a new updated form. The same issues were raised at the previous hearing, and the tenant agreed that he was notified in June 2020 and then again in September 2020 of noise complaints. Since that hearing, there have been more complaints, with louder noise, made against the tenant. The tenant stated that he “did not mean to disturb” other neighbours and that he would do better in the future. He even agreed that he was trying to be quieter in his rental unit. He agreed that he could not sleep properly and would stay awake for long hours during the night.

The tenant said that the complaints of his neighbours did not apply because they were from new neighbours who had recently moved into the building. He also claimed that the noise was coming from the street because he lives downtown. He denied playing the same music group repeatedly. I do not find the tenant’s explanations regarding the noise complaints to be reasonable or probable. The complaints against the tenant are so detailed, so as to include the name of the songs, the band, the time of noise, and the length of noise.

I found the tenant’s evidence to be less credible, as compared to the landlord. On the one hand, the tenant agreed with causing noise and aiming to do better, and on the other hand, he completely denied the noise saying it was coming from a unit above him or from the street. During the hearing, the tenant’s version of events changed frequently, he became upset and agitated with questions, and his evidence was not given in a calm, candid or straightforward manner.

Section 55(1) of the *Act* reads as follows:

*55(1) 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.*

Accordingly, I dismiss the tenant's application to cancel the landlord's 1 Month Notice, without leave to reapply. I find that the landlord's 1 Month Notice, dated September 29, 2020, complies with section 52 of the *Act*.

I issue an order of possession to the landlord against the tenant, effective at 1:00 p.m. on January 31, 2021. During the hearing, the landlord requested the above date for an order of possession, stating that he wanted the tenant to enjoy the Christmas season and have enough time to find a place to move out.

As this tenancy is ending, I do not need to consider the remainder of the tenant's application for an order for the landlord to make repairs and to restrict the landlord's right to enter the unit, as these claims only relate to an ongoing tenancy. These claims are dismissed without leave to reapply.

As the tenant was unsuccessful in his application, his claim to recover the \$100.00 filing fee is dismissed without leave to reapply.

### Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective at 1:00 p.m. on January 31, 2021. Should the tenant 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: December 22, 2020

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Residential Tenancy Branch