



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## 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.

The tenant attended the hearing and was represented by an advocate, AA ("tenant"). The landlord was represented at the hearing by property manager, TJ ("landlord"). As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's Application for Dispute Resolution and pages 1 – 35 of the tenant's evidence. Pages 36 – 38 of the tenant's evidence was not exchanged in accordance with rule 3 of the rules of procedure and the tenant agreed those pages should not be referred to in this decision. The tenant confirmed receipt of the landlord's evidence and stated he had no concerns with timely service of documents.

### Preliminary Issue

The tenant appears to seek a monetary order in the description of his application. At the commencement of the hearing, the tenant advised me that he abandons this aspect of his application.

### Issue(s) to be Decided

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

### Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's 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 tenant originally commenced his tenancy in a unit on the second floor but was moved to the fourth floor after renovations caused him to lose the use of a balcony. There were issues with noise emanating from the tenant when he lived on the second floor which continued when the tenant was moved to the fourth floor in March of 2017. The landlord provided hand-written notes from the building manager documenting the noises which includes hearing "*very loud sex noises*" emanating from the tenant's second floor unit from the hallway on January 8, 2016. On January 14, 2016, the building manager gave the tenant a note that doesn't specifically mention the sexual noises she heard coming from the suite but asks the tenant to turn down the volume.

When the tenant is moved to the fourth floor unit, the noises continued. This unit shares a common wall with the next door occupant hereinafter referred to as X. X began to complain of the tenant's loud music and more specifically the sounds of the tenant masturbating – including moaning and hearing the tenant's release. The landlord tried to get an independent witness to corroborate the disturbing noises being heard however the noises were being made outside the regular business hours of the building manager and stopped before the building manager came on shift to investigate.

X contacted the vice-president of the property management company regarding the tenant's behaviour in August of 2017. She also kept a log of the noise heard next door. The vice-president sent a letter to the tenant that addresses general noise complaints on June 30, 2017 and on August 9, 2017. The masturbatory noises continued, and X continued to log them. The landlord testified X became frustrated and left the building in September of 2020.

The next tenant moving into the X's unit will be referred to as Y. Y moved into the unit on October 1, 2020 and began to hear the same masturbatory noises as X but did not inform the building management right away. The building manager documents an hour long call from Y on November 16<sup>th</sup> whereby Y advises the building manager that the tenant can be heard *masturbating between 4:30 and 5:30 a.m. 100% of the a.m.'s since she's moved in*. Y describes the sound as "*loud groans at the end...*" but states she

does not hear the sound of pornographic films. Y also sends a statement to the police on January 18, 2021 whereby Y advises the police *“for the first 6 weeks of my residency at [address], I heard the neighbour loudly masturbating and finishing by the wall. This got louder and louder as time progressed until one day it sounded like 3 dimensional, so disgusting”*.

Y also relates to the building manager an incident in the laundry room on November 16, 2020 whereby the tenant is alleged to have demanded to know Y’s name and which unit Y lived in after a misunderstanding about the machines. The tenant is alleged to have intimidated Y, rolling up his sleeves threateningly, according to the incident report filed by Y to the landlord. The incident was related a second time in Y’s statement to the police.

The landlord’s property manager, building manager and the tenant meet at the tenant’s rental unit to discuss the specific issue of masturbation and the associated sounds on November 19, 2020. The landlord told the tenant that Y is a single female, feeling afraid and intimidated. The tenant denied the behaviour at first, but on November 22<sup>nd</sup>, the tenant emailed the landlord thanking him for the conversation. In the email, the tenant advises the landlord that he’s had a traumatic brain injury, that he is sickened to learn his actions have caused someone to have to move. (tenant X). He continues by saying he will do everything he can to change his behaviour. The email ends with *“I will not take this lightly and will continue to be mindful be a more conscious and respectful tenant in the building as I really do love where I live...”*

Y sends another text to the landlord on November 20<sup>th</sup> advising the landlord that the tenant was once again heard “releasing” after masturbating that morning even though Y was wearing headphones to block the sounds. Y’s text to the building manager dated November 20<sup>th</sup> is provided as evidence.

That same day, on November 20<sup>th</sup>, the tenant removed an Amazon package addressed to Y from the building’s lobby. That night, when Y returned home, the tenant banged on Y’s door. Y didn’t open the door, but texted the building manager after recognizing the tenant, the same person who intimidated her in the laundry room. The building manager immediately sent a text to the tenant advising him not to knock on her door, and to relay any messages meant for Y through her. The tenant responds by saying he put it back where he found it, but it couldn’t be located afterwards. In the text exchanges, the tenant clearly states he knew the package was addressed to Y, but he wanted to deliver it to Y “as a good neighbour”. Y called the police on November 26<sup>th</sup> to report the

package as stolen. The following morning, the package was left in front of Y's door after the police spoke to the tenant, according to Y's statement to the police.

On November 27<sup>th</sup> the landlord served the tenant with a One Month Notice to End Tenancy for Cause by posting it to the tenant's door. The reasons for ending the tenancy are:

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;*

the landlord records the following under "details of cause"

*Tenant is a self-confessed sex addict and has a long history of disturbing the quiet enjoyment of his neighbours due to excessively loud masturbation, loud sex acts and playing of loud pornography. Tenant was directly responsible for 'chasing' his last neighbour from the building due to these consistent noise violations, and has now doubled his efforts to disturb his new neighbour. Tenant has been spoken to many times, and warned in writing many times. Tenant has now deliberately taken a package belonging to his neighbour from the lobby and held it in his suite for 6 days, before being told by the Police to return the package. Using the Package as a ruse to meet the neighbour, Tenant has knocked on his neighbours door, frightening the neighbour, who feels that their personal safety is at risk. Tenant has repeatedly lied to the Landlord about his behaviour, which continues on a consistent basis. Enough is enough - the Landlord can no longer tolerate such disturbances to other tenants, and to the lawful rights of other tenants. The Landlord is now seriously concerned for the safety of other tenants in the building, and feels we have no choice but to evict.*

The tenant provided the following testimony. The early warning letters sent to the tenant gave "other noises" such as music being an issue for the landlord. The sound of masturbating and associated "release" was never presented as a cause to end the tenancy. The contents of the notice to end tenancy are disputed as the grounds are insufficient and improbable. The tenant is not a sex addict, he has never been diagnosed with this affliction. The tenant has a learning disability and he responds

poorly to being blamed or shamed. The tenant had a traumatic brain injury and the tenant points to doctor's reports to corroborate this.

The tenant argues that he does not cause excessive noise disturbing the other occupants of the building. He provided several character references from other tenants in the building as well as his supervisor and his twin brother.

When the tenant is told about issues, he complies with fixing them. For example, when the tenant below him complained about banging noises, the tenant immediately sold his weights and joined a gym to alleviate the noise concerns. He sold his stereo and only uses a portable speaker with a maximum loudness of 65 decibels.

Regarding the masturbation sounds, the tenant argues that there is insufficient evidence of this occurring. There are no witnesses except X and Y. He has never masturbated in the dining room and has ceased doing it in his living room. The noises heard by X and Y are from a "*theragem*" machine. It has jade rollers and folds out like a sunbed and is positioned against the dining room wall. When using it, the person may make noises in response to the relief it gives. The noises are not heard by anyone else. Even the building manager who lives beside the tenant has denied personally hearing it. The tenant doubts the credibility of both X and Y.

The tenant disputes the description of the laundry room incident. The tenant points to the building manager's description of the incident as a misunderstanding where Y should not have touched the tenant's laundry. Likewise, the amazon package incident was innocent. The tenant did not know Y was the same person he encountered in the laundry room and lived beside him. Knocking on Y's door was benign. The police have confirmed with the tenant that their file on the package theft is closed.

Lastly, the tenant points out that in the documentary evidence, the sexual nature of the complaints is never mentioned. It was only brought up in the 2020 meeting.

### Analysis

The landlord served the tenant with the notice to end tenancy by posting it to his door on November 27, 2020. The tenant is deemed served with the notice three days after it was posted, on November 30, 2020 in accordance with sections 88 and 90 of the Act. The tenant filed his Application for Dispute Resolution to dispute the notice within the 10 days required to dispute it, on December 3, 2020.

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 significantly interfered with or unreasonably disturbed another occupant or the landlord or the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord argues that the tenant has been disturbing multiple tenants with sounds of a sexual nature since January 2016, where the building manager herself heard the sound of pornography coming from the tenant's unit while the tenant lived on the second floor. While the tenant argues that the notice given to him in 2016 didn't specifically note that the sound of pornography could be heard and therefore shouldn't be considered as unreasonably disturbing other occupants, I find this argument lacks merit. I consider the noise notice given to the tenant in 2016 forms part of the narrative that the tenant has been made aware that the neighbours could hear what's going on inside his unit.

I am not persuaded by the tenant's argument that the landlord failed to provide specific warnings to the tenant that the sexual sounds needed to stop in order for the landlord to prove the tenant was unreasonably disturbing other occupants. The landlord provided multiple warnings regarding the "noises" that could be heard by the tenant's neighbours. The nature of the noises were general, rather than specific, given the embarrassment it could cause to the tenant. I find the general warnings were broad enough for the tenant to understand he needs to keep the sexual noises private and silent as well as any other potentially disturbing noises emanating from his unit.

I find the landlord's evidence corroborates his testimony that the tenant continued to unreasonably disturb other occupants when he was moved to the fourth floor. The logs taken by both X and Y pinpoint in meticulous, graphic detail, not only when the tenant was masturbating, but also the specific time the tenant experiences "release". The tenant had the capacity to sexually gratify himself silently, however he chose not to do so. It is unreasonable to expect any occupant living next door to be subjected to this auditory experience daily and not be disturbed.

While the tenant argues that both X and Y lack credibility since nobody else heard the tenant, I find the fact that each of these women independently logged the incidents to be conclusive proof that what each woman heard is real. I find the tenant's argument that Y misinterpreted the sound of the tenant masturbating and "releasing" as the *theragem*

machine to be unrealistic. The sound of a machine and the sound a person engaged in masturbation could not possibly be confused in any probable way. I find the tenant has provided insufficient evidence to satisfy me this is the version of reality that should be preferred.

I also take into consideration the actions of the tenant immediately following the meeting he had with the property manager and the building manager on November 19<sup>th</sup>. While he wrote an email to the property manager expressing his disappointment with his behaviour and his willingness to change it; Y was subjected to hearing the tenant masturbating at 5:00 a.m. the next morning while she was wearing headphones. I do not find the tenant's denial of masturbating loudly on November 20<sup>th</sup> to be the preferred version of events. I find Y's independent, unsolicited text message sent to the landlord on November 20<sup>th</sup> to be an accurate reflection of what she heard. To be clear, I am satisfied the tenant significantly interfered with or unreasonably disturbed other occupants of the residential property, both X and Y.

The tenant provided evidence of his brain injury, however the fact that the tenant has this injury does not relieve him of the obligation to not significantly interfere or unreasonably disturb another occupant. All tenants are required to uphold this requirement when living alongside other occupants in the building.

Next, I turn to the incident whereby the tenant removed Y's amazon package from the lobby and went to her door to give it to her as a "good neighbour". From the evidence, it is undeniable that the tenant purposely removed a package clearly addressed to Y. There is no evidence before me that Y wanted the tenant to take her package and deliver it to her. From the evidence it does not appear the tenant and Y enjoyed a friendly relationship where retrieving packages for one another would be expected or even considered thoughtful. From all appearances, the parties were complete strangers, with the exception of the encounter in the laundry room. I find the behaviour of the tenant irrational at the least, and potentially dangerous at the worst, considering the previous interaction between the tenant and Y. I find the removal of Y's personal property from the lobby to be a significant interference to Y, another occupant of the residential property.

**Based on these findings, I am satisfied the tenant significantly interfered with or unreasonably disturbed another occupant. I uphold the landlord's notice to end tenancy.**

Section 55 of the Act states:

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 landlord's One Month Notice to End Tenancy for Cause and find it complies with the form and content requirements as required by section 52. I find the landlord is entitled to an Order of Possession. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

#### 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 in 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: February 27, 2021

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Residential Tenancy Branch