



# 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 a tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a One Month Notice to End Tenancy for Cause dated January 13, 2021 (1 Month Notice) and to recover the cost of the filing fee.

The tenant and the landlord attended the teleconference hearing and were affirmed. The parties confirmed that they had exchanged their documentary evidence, had the opportunity to review that evidence and were given the opportunity to ask questions. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As both parties confirmed that they had received and reviewed evidence from the other party prior to the hearing, I find that both parties were sufficiently served under the Act.

### Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

### Issues to be Decided

1. Should the 1 Month Notice be cancelled?
2. If yes, is the tenant entitled to the filing fee under the Act?
3. If no, is the landlord entitled to an Order of Possession?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on December 1, 2019 and reverted to a month to month tenancy after November 30, 2020. Rent is due on the first day of each month.

A copy of the 1 Month Notice was submitted in evidence. The tenant confirmed being served with the 1 Month Notice on January 13, 2021, the date it was signed by the landlord. The tenant disputed the 1 Month Notice on the same date, January 13, 2021. The effective vacancy date is listed as February 15, 2021, which the parties were advised during the hearing automatically corrects under section 53 of the Act to February 28, 2021 as rent is due on the first day of each month.

In addition, the landlord confirmed that the tenant had paid for use and occupancy for April 2021. As a result, the parties were advised that the best case for the tenant was that I cancelled the 1 Month Notice, and the worst case scenario would be that I uphold the 1 Month Notice and issue an Order of Possession for April 28, 2021 at 1:00 p.m.

The 2 causes listed on the 1 Month Notice are:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The "Details of Cause" section listed on the 1 Month Notice states as follows:

[Name of tenant] HAS 2 BEAGLES WHICH BARK NON-STOP FROM 1AM TO 6AM. I HAVE COMPLAINTS FROM ALL OF HIS NEIGHBORS. I HAVE GIVEN

HIM 2 CAUTION LETTERS REGARDING THIS ISSUE BUT IT CONTINUES NIGHTLY. HE HAS HAD ALTERCATIONS WITH A FEW RESIDENTS, SWEARING AT THEM, TELLING THEM TO SHUT UP ECT. I CAN NO LONG ACCEPT THIS BEHAVIOR AT A TIME WHEN ALOT OF PEOPLE ARE WORKING FROM HOME BUT CAN'T SLEEP DUE TO THE CONSTANT BARKING."

[Reproduced as written except for anonymizing name of tenant for privacy reasons]

The landlord described three complaint letters, two of which were received prior to the 1 Month Notice being served on the tenant. The third complaint letter was not considered at this proceeding as it was received after the 1 Month Notice was issued and it is my discretion to consider matters after the 1 Month Notice is issued and I exercise my discretion not to consider additional matters at this proceeding since the 1 Month Notice was issued.

The first complaint letter dated January 4, 2021, is from MS of unit 224 (first complaint) and states:

It is with regret that I must write this letter. I work on afternoon shifts and don't get home until 11pm. As you can imagine sleep comes around one AM and the last few weeks has been difficult as a neighbour who lives in #229 has 2 beagles and on several occasions the dogs have started barking at 2 AM and continue though the night till their master finally decides to take them out at 7 AM. This does not allow me the needed sleep & therefore my job and attention to detail needed in my position has suffered along with my ability to keep up with the maintenance of my own home as I lack energy due to lack of sleep. Further on one occasion I was coming into my own place and the resident of 229 was standing at the door of 227 teasing that dog and making him bark.

It is obvious this person needs help but the quiet of residents or lack of it is not the answer.

The second complaint letter dated January 12, 2021, is from XS (second complaint) and states:

229 was out walking his 2 dogs when I cam in with groceries. Then I went to do Laundry – came back in the stairwell, stairs STINK – Dog Shit – I come up stairs A229 was in the hallway – I asked him if he had dog shit on his feet He said it wasn't him – I said "Well it wasn't there before". He said "leave me alone lady". I

went back to Laundry Room and then to the office to report – Didn't see any [illegible].

We have a case of him keeping the dogs in when they want to go out to the bathroom. He makes them wait from 2AM to 7AM one cries pitiful the other barks like crazy. The dogs are being abused – The SPCA or Protection Agency should be alerted. It being going on for some time now.

He is obviously a sick individual and also the noise bylaw here in Langley is not being kept- It's illegal what he is doing to those beautiful dogs. Please help the dogs they are in pain from needing to wait so long to releave their bladder. Also having to wait so long they have to pee somewhere on the nice walls? On the nice carpet?

Hey we love our place. Police, SPCA, can assist.

The landlord testified that based on an earlier complaint received, the tenant was issued a warning letter dated November 30, 2020 (first warning) and after no change with the barking, a second warning letter was issued dated January 8, 2021 (second warning). The tenant confirmed having received both the first and second warning letters.

In response to the allegations made, the tenant stated that the neighbour in 227 has a personal issue with him as the tenant has a personal loan from the neighbour in 227. The tenant first stated that his dogs do not bark inside their kennel and later changed that testimony to state that the younger beagle does bark inside the kennel, so the tenant will let the younger beagle out of the kennel to avoid barking.

The landlord stated that when the tenancy began, the tenant had 2 older beagles, and one beagle passed away and, without permission of the landlord, the tenant got a beagle puppy. The tenant confirmed this information and stated that the beagle puppy was brought in on September 10, 2020 and is the one that barks out of the two dogs.

The tenant testified that there were no warnings between September 2020 and the end of November 2020. The tenant presented a photo showing a dog kennel and a bark collar. The tenant stated, "I am not saying that my dog doesn't bark but I use the kennel and bark collar and then it stops." The tenant contradicted themselves by then stating that the dog was released from the kennel to stop barking and that the tenant work security between 6AM and 2PM. The tenant states that he wakes up at 3AM to take his dogs out.

The tenant alleges that all of his neighbours are conspiring to have him evicted and that they all smoke pot together and that the neighbour in 227 is the leader of them all.

The tenant denied banging on the door of 227 but did admit that he was taking video outside of door 227 to capture the dogs in 227 barking. The tenant then referred to that recording but could not recall the name of the recording to present during the hearing.

The tenant testified that his dogs could not be barking at 2:30AM when the tenant does not get up until 3AM. The tenant also stated that he was given no warning, and that 5 days after the second letter, the tenant received the 1 Month Notice.

The landlord responded to the tenant's testimony by stating that this matter is not a conspiracy against the tenancy and they neighbours are not all friends and most certainly don't smoke pot as claimed by the tenant. The landlord stated that the tenant from 226 is newer to the building and is 72 years old. The landlord also stated that they are not friends with tenants, but are friendly to all and that the landlord has to act when complaints are received about barking dogs, feces, etc.

The landlord stated that the tenant is very aggressive and since being issued the 1 Month Notice, the tenant has berated others and told other tenants to "fuck off", which the tenant denied during the hearing. The landlord stated that the tenant pushed one tenant up against the wall, which the tenant denied and stated that the other tenant was the one who pushed him against the wall.

The tenant stated that they are 60 years old, has been doing security for 12 years, and that the tenant from 227 is in his 30's. The landlord summarized their position that their goal is to have a peaceful, quiet enjoyment in the building, so when they get complaints, they have to act. The tenant responded by stating there is no evidence.

After 47 minutes, the hearing concluded as neither party had anything additional to present and both parties confirmed that they felt that they were given a sufficient opportunity to be heard.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

When a landlord issues a notice under Section 47 of the Act, they bear the responsibility in providing sufficient evidence to support the issuance of that notice. I have considered

the testimony, documentary evidence and digital evidence, and I am satisfied that the landlord has provided sufficient evidence to support that the tenant was warned on two occasions in writing about barking dogs. In addition, I find the tenant's testimony to be inconsistent and therefore not credible. In reaching this finding, I have considered that the tenant first testified that his dog does not bark in the kennel and then later admitted that his dog does bark in the kennel. Also, the tenant claims that he was not given any warnings yet admitted during the hearing that he received both written warning letters, which I find to be contradictory. Therefore, based on the totality of the evidence before me, I find the landlord's evidence is more consistent and therefore more compelling and I afford the landlord's evidence more weight than that of the tenant.

In addition, I afford significant weight to the two complaint letters, both of which complain of barking dogs and are consistent. Although the tenant claims the dogs could not bark at 2:30AM because the tenant does not wake up until 3AM, I find it is just as likely than not that the tenant has become so accustomed to the barking that the tenant could sleep through the barking until such time that the tenant wakes at 3AM.

Section 28 of the Act applies and states that all tenants are entitled to quiet enjoyment and are to be free from unreasonable disturbance. I find the tenant has had significant time to either rehome the younger beagle or have the dogs trained to not bark during the night. I also find that the other tenants have the right not to be woken by barking dogs in the middle of the night. Therefore, I find the tenant breached section 28 of the Act and that the 1 Month Notice is valid. Given the above, I dismiss the tenant's application in full.

I find the tenancy ended on the corrected effective date, which automatically corrects under section 53 of the Act to **February 28, 2020 at 1:00 p.m.** Pursuant to section 55 of the Act, I have reviewed the 1 Month Notice and find that it complies with section 52 of the Act and therefore, I grant the landlord an order of possession effective **April 28, 2021 at 1:00 p.m.** This date has been used as money for use and occupancy has been paid by the tenant for April 2021.

As the tenant's application fails, I do not grant the filing fee.

**I caution** the tenant not to breach section 28 of the Act in the future.

### Conclusion

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

The tenancy ended on February 28, 2021 at 1:00 p.m. The landlord is granted an order of possession effective April 28, 2021 at 1:00 p.m., which must be served on the tenant. Should the landlord require enforcement of the order of possession, the landlord may apply in the Supreme Court.

The tenant has been cautioned as noted above. The tenant should be aware that if the tenant does not comply with the order of possession, the tenant may be responsible for all enforcement costs.

This decision will be emailed to both parties. The order of possession will be sent by email to the landlord only for service on the tenant.

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: April 14, 2021

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Residential Tenancy Branch