



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated February 13, 2021 ("One Month Notice"), and to recover the \$100.00 cost of his Application filing fee.

The Tenant, his advocate, D.W. ("Advocate"), the Landlord, and the Landlord's counsel, J.C. ("Counsel"), 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. During the hearing, the Tenant and the Landlord were given the opportunity to provide their evidence orally and to 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. I note that the Tenant did not submit any evidence, other than a copy of the One Month Notice, a statement denying the claims in the One Month Notice and raising irrelevant matters, and evidence that he paid his rent on time.

### Preliminary and Procedural Matters

The Parties provided and/or confirmed their email addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only

consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised them that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

The Parties referred to a Four Month Notice to End the Tenancy for demolition, renovation, or conversion of the rental unit; however, neither Party pointed out a copy that had been submitted to me, nor an amendment to the claims in the original Application. As such, I will only consider the Tenant's Application to cancel the One Month Notice.

The onus to prove their case is on the person making the claim. In most cases, this is the person who applies for dispute resolution. However, a landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy. Further, section 55 of the Act states that if a tenant's application to cancel an eviction notice is dismissed, and I am satisfied that the eviction notice complies with the requirements under section 52, I must grant the landlord an order of possession.

#### Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

#### Background and Evidence

The Parties agreed that the periodic tenancy began on December 1, 2020, with a monthly rent of \$950.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$475.00, and no pet damage deposit. the Landlord confirmed that she still holds the Tenant's security deposit in full.

In her written submissions, the Landlord said the Tenant rents a unit on the ground floor of the house, and that there was another tenant, B.R, renting the upstairs unit above the rental unit. The Landlord said: "The House is also neighboured by residential properties on either side and at the rear."

The Parties agreed that the Landlord served the One Month Notice to the Tenant in person on February 13, 2021. The One Month Notice had the rental unit address, and an effective vacancy date of March 13, 2021, which is automatically corrected by the Act to March 31, 2021. The grounds for the One Month Notice were that the Tenant

allowed an unreasonable number of occupants in the unit, and that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

In the hearing, the Landlord said:

What happened in January 2021 - the Tenant was disturbing occupants of the house and neighbours. His visitors would come and gather in large groups partying until early in the morning and late at night. It would continue for days at a time, despite health orders. Visitors would stay over night and with animals, which is explicitly against the tenancy agreement. Section 4B doesn't allow pets. They leave garbage around the house and property, and throw it over to other properties. He is parking more cars than he is allowed to – there's only one spot under the tenancy agreement.

On or about January 3<sup>rd</sup> or 4<sup>th</sup>, the Landlord called the upstairs tenant [B.R.] – a pre-existing tenant – to follow up on her rent cheque. She usually paid with cheques a year in advance. [B.R.] was an elderly woman with cancer; she was going to get cheques pretty soon, but she also complained that [the Tenant] and his guests were gathering in large groups and were quite noisy at all hours of the day. She said they were interfering with her quiet. I called the Tenant to stop the noise.

Counsel said:

About a month later, [the Landlord] called Ms. [R.] again. During that call, Ms. [R.] reiterated her complaints about [the Tenant], and she specifically said that on January 26 – the night before her surgery – [the Tenant] had kept her up all night with loud music and noise with people coming and going all the time. [The Tenant] had four long-term guests staying with him and a dog. She said it was unbearable with the noise – she couldn't be living with any comfort. The Landlord said she would speak to [the Tenant]. And again, on February 7, she said 'you have to stop partying; the upstairs tenant is ill'. She said if he did continue, then she would have to end his tenancy for cause.

On February 12<sup>th</sup>, the Landlord called Ms. [R.] again to ask if the noise had stopped. [Ms. R.] said, 'No – same, same', even after having warned the Tenant and given successive complaints. The Landlord on February 13 attended in person and served him with the One Month Notice for cause. So, [the Landlord] says the form and content are sufficient and correct for the Act.

The Advocate said:

According to what's been said. He has a roommate and girlfriends, and one had a dog. She amended her tenancy agreement, as the first one didn't have anything about pets. And I'm sure you're allowed to have a guest come over with a pet if it doesn't live in the premises. It didn't stay there past one night. I talked to [B.R.] several times, and she made no complaints to me. I understand she had stage 4 cancer.

There are vents to [the Tenant's] apartment that you can hear noise – she sat there and smoked three packs a day. She was a beautiful lady and she wasn't going to last another couple of months. They're almost saying that – she did say that he was to blame for her death. She was stage four cancer. Maybe things were loud. There was no need to be afraid of him. The neighbour on the left side - [A.] - she said no noise was coming out of the place. People on the right never said a word – their dog barks constantly.

Things did settle down after that – [B.R.] had already passed away. It can't be verified, because she's no longer with us.

The apartment is in good condition.

The Tenant said:

As for her calling me to stop partying. I was sick for two weeks before that. How could I party? As for her to give me time to settle down. There was no written notice from the Landlord to quiet things down. The Landlord planted a camera in the laundry room as a listening device.

Counsel said:

Essentially, she did give them sufficient notice. No written notice, but she called them, and they were aware of the complaints. She gave them several weeks to get in order. She warned them if they continued to be disruptive, then potentially the tenancy could end.

As [the Advocate] noted, [B.R.] did pass away, unfortunately, the day after the notice had been delivered. There is a copy of her obituary in our documents. It might be helpful to note additional evidence from her friends and the neighbours.

See some of their complaints in Appendix B4.

Appendix B4 contains a copy of an email from B.E. to the Landlord dated February 27, 2021. This email states:

Hey [Landlord]

Just wanted to share some of my conversations with [B.R.], your former tenant at [residential property address]. [B.] shared her concerns with me that the downstairs tenant was involved in some shady activities. He would have groups of people in his apartment (at a time when groups aren't allowed), music on blast both day and night. There was a steady stream of vehicles coming at all hours of the day and especially at night. [B.] would not involve the police because she feared retaliation from the tenant. Also at the time [B.] was not feeling well and just didn't have the strength nor energy to get involved in the tenants activities. He made her last days miserable and had no regard for her well being. [B.] being a single lady living alone didn't want to cause any problems with the tenant and lived in fear of him. She believed that there was illegal activity going on downstairs and was uncomfortable about the situation. I encouraged [B.] to call you (her landlady) but again she was sick and just didn't have the strength. [B.] loved her home she rented from you and was even happy with the tenant for the first few months but things changed and they changed fast. The night before [B.] went for her surgery (Jan 26/21), he kept her awake all night with his loud music, loud noise downstairs and vehicles coming and going all night.

It is so unfair that he can't be held accountable for his actions.

Thanks for listening,

[B.] .

[reproduced as written]

Counsel commented on this piece of evidence. She said:

. . .look down toward the latter half of the page. She was a friend of Ms. [R.'s], '[B.R.] shared her concerns with me that the downstairs tenant was involved in shady activities. He would have groups when groups not allowed. . .'. This is in place of Ms. [R's] testimony.

Counsel also pointed to Appendix B5, which she said was a similar statement from another friend of Ms. [R.'s]. Counsel focused my attention on the last third of the page.

Appendix B5 contains an email from A.V. to the Landlord, and it states:

[B.R.] did not want to be a bother to you, her landlady, or to anyone else and was a very private person. She was also fairly tolerant of other people's life choices, but had expressed her upset with the tenant downstairs to me quite often when I would see her to help her with her day to day needs.

On many Saturdays and Sundays when I would go over to [B.'s] she would be very tired. When I would ask why, she would relate to me that the tenant downstairs had people in either overnight or very late with loud music, loud voices, slamming sounds, and on several occasions was visibly upset because someone from downstairs had been in the laundry room and making noise or slamming doors. She would say that it only quieted down when most people get up for work.

One time in particular she was saying there were a couple of girls, a couple of guys, loud music and raised voices then slamming doors and shouting. Another time it was swearing. If the father of that tenant was there, she said there was usually shouting and swearing. [B.] said she was very concerned about someone gaining entrance to her apartment through the laundry room because the person who was in the laundry room was not the tenant themselves.

She did not wish to involve the police and only chose to call you, her landlady, when she did because her tolerance was at an end. It simply happened that her tolerance ended when it did, as I had no idea that she was as ill as she was and passed away.

Yours,

[A.V.]

[emphasis added]

The Landlord said that B.R.'s unit included the laundry room in the basement, whereas the Tenant had his own in-suite laundry.

Counsel referred me to the part of this email, as underlined above. She said:

On the second page – four lines down – it starts, 'One time in particular', and she was saying that she didn't want to involve police, as she was fearful of [the Tenant] and his visitors. There's quite a bit of evidence of these disturbances and

interference. She was fearful to use her own laundry room if she found strangers in there.

Counsel then referred me to Appendix B6, which she said was a statement from a neighbour of the residential property, S.G. In this email to the Landlord dated February 22, 2021 at 4:03 pm, S.G. said:

Hi again,

Without a police report there is no record of the noise complaint.

Hey it's [S.], I live at [her address], and the person or persons next door living in your rental have been partying loud banging on door and throwing cigarette butts in our yard.

In this email chain, the Landlord responded in a text dated February 22, 2021 at 9:23 pm. She said:

Thank you, Horrible, pls call my cell [cell number] when the party gets going and I will call the cops. There are covid restrictions as well. Nobody should have to put up with this. He put the lady upstairs through hell and you as well. This is BS. . . .

In this same email chain, S.G. sent a message to the Landlord dated March 28, 2021. S.G. said:

Hey just wanted to let you know that last night we had to call the cops next door at ur basement suite at 1 am because they were partying the cops came talked to them and didn't hear a peep after. But just wanted to let you know :)

The Advocate replied to this evidence, as follows:

This is all second-hand info from [B.R.'S] friends, and [the Landlord] knows it. Yes, the police were there at 2 a.m. and they abided and shut it down. As far as garbage and stuff, [the Tenant] had gone to the mall with his roommate. Somebody had thrown the garbage – not [the Tenant]. So, there's one neighbour on one side, and the neighbour on the other saying we've heard nothing and no complaints. I just got to see all this about a week ago, so I talked to her; she works in the vet clinic in [town], and I had a conversation with her and she hasn't heard anything or seen vehicles coming and going on a nonstop basis. The girls

and the dog was one night. No one entered the laundry room. The breaker box for the apartment is in the garage that you get through by the laundry room. But then one day [the laundry room] had a lock on it.

Counsel referred me to Appendix B22, which includes a police report dated May 11, 2021, about an occurrence called in by the Landlord about the Tenant and reported on March 14, 2021 at 12:35 hours. This police report included a Synopsis, which states:

On March 14, 2021 at 1235 hours, [the Landlord] requested police attendance to inspect a rental unit as [the Tenant] (renter) is know to be [empty space] Basement [residential property address]. [Landlord] stated [Tenant] is award of the inspection as he was served a 24 hour inspection notice. Cst. [S.] met up with [Landlord] and her carpenter at 1500 hours in front of the unit. [Tenant] let [Landlord] in but did not want the carpenter in his unit. [Landlord] obtained limited photos of the unit as [Tenant] refused to move posters covering damages on the wall, alleged by [Landlord]. During the inspection process words were exchanged between the parties. As [Landlord] took photos of the electrical box and made remarks of electricity being stolen. [Landlord] left the unit after the inspection.

Conclude file

Cst. {P.S.]  
[local] RCMP

The Landlord also submitted a recording of the carpenter addressing issues on the outside of the residential property that the Landlord said the Tenant worked on. In this recording, the carpenter's comments included the following:

Now what they don't get is that they really messed up. See these corners need to be lapped. You have to lap your corners; it's supposed to be a foot lapped over each other or two - what ever makes you happy. You don't butt joint them. Now this corner will always be leaky. The only way to fix this is you actually have to remove more siding this way.



What they've also done is they removed the paper from up here and somehow, we have to try to feed paper under the last course, like a shingle effect on a roof. That's a fail. If you had a building inspector here, he'd give you a huge [recording stops there].

Counsel said:

For the One Month Notice, he admitted to having a roommate, but the tenancy is only with [the Tenant]. He can assign a sublet, but he needs written authorization from the Landlord. She didn't authorize a permanent roommate/occupant. And this is one of the reasons for the excessive number of occupants complaint.

Please note, from the legal side of things, [the Landlord] is allowed under subsections 47(1)(c) and (d)(i) to evict the Tenant for an unreasonable number of occupants and for unreasonable disturbances.... She provided evidence of that. Her evidence is that she has notified the tenant multiple times by phone and warned him that the tenancy would end. Our position on balance of probabilities that she has this cause and notice. The excessive visitors - some did stay over night; the evidence of Ms. [R.'s] friend and in his own evidence substantiates that he had a roommate. The noise and disturbances, throughout January, February, and it continued and has continued to this day.

The Advocate said:

There is no structural damage to the building, whatsoever. It was pre-existing – I did all the construction work there. Her videos are absolutely ridiculous.

The place has settled down to complete quietness. There are no wild parties going on like they're saying there is. It's been very quiet. There's no damage to the inside of the apartment. I inspected it myself. I did the renovations inside and outside. I've been in this business for 45 years.

The Tenant said:

She left me one voicemail to calm it down, and then served me the eviction notice a couple days later. I never received one noise complaint or ticket. My rent's been paid on time or early. I didn't receive a copy of tenancy agreement until February 7.

### Analysis

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

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

#### **Landlord's notice: cause**

**47** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(c) there are an unreasonable number of occupants in a rental unit;

(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,

...

(3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

The Tenant did not deny that he had a roommate living in the rental unit or that the tenancy agreement stated that he was the only tenant renting the rental unit.

Similarly, the Tenant did not deny having had loud parties at night in January, February, and March. Further, I find that the Landlord submitted sufficient evidence that these parties significantly interfered with an unreasonably disturbed the other tenant in the residential property, despite the Landlord's repeated telephone calls to control this behaviour. I find there is evidence from the Landlord and the other tenant's friends to indicate that the other tenant was often tired from lack of sleep because of the noise of the Tenant's parties. There was even an occasion in which the other tenant had inadequate sleep before she had surgery the next day. While the Advocate referred to this as hearsay, essentially, I note that the standard rules of evidence do not apply strictly to administrative hearings such as this. I find that hearsay is allowed, although, I give it less weight than direct evidence. However, I also note that the Landlord's evidence in this regard is internally consistent and consistent with the evidence that the other tenant had stage 4 cancer during this time and subsequently died. As such, she

was not able to provide evidence to support the Landlord's claim. I find the hearsay evidence from the other tenant's friends is reliable and useful on a balance of probabilities, and I accept it as true.

I find the Landlord submitted sufficient evidence to establish the grounds for evicting the Tenant for cause, pursuant to sections 47(1)(c) and (d) of the Act. I also find that the One Month Notice is consistent with section 52 as to form and content.

Therefore, and pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession** of the rental unit, **effective two days after it is deemed served** on the Tenant.

### Conclusion

The Tenant is unsuccessful in his Application to cancel the One Month Notice, as the Landlord provided sufficient evidence to establish the validity of the One Month Notice on a balance of probabilities. I dismiss the Tenant's claim wholly without leave to reapply.

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

Should the Tenant 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: May 31, 2021

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Residential Tenancy Branch