



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding D.J. MAC CONSULTING  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

CNC-MT

### **Introduction**

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a One Month Notice to End Tenancy for Cause and for more time to apply to set aside this Notice.

The Tenant stated that on March 10, 2021 the Dispute Resolution Package was served to the Landlord, via registered mail. The Advocate for the Landlord acknowledged receipt of these documents.

On February 26, 2021 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, although she does not recall that date or method of service. The Advocate for the Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On May 15, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Advocate for the Landlord stated that this evidence was served to the Tenant, via registered mail, on May 15, 2021. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On May 19, 2021 the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on May 19, 2021. The Advocate for the Landlord stated that this evidence was received on May 27<sup>th</sup> or May 28<sup>th</sup>, although the Landlord is not opposed to have the evidence accepted as evidence for these proceedings, even though it was

not received by the Landlord two weeks prior to the hearing. As such, this evidence was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

### Preliminary Matter

The Advocate for the Landlord stated that the Landlord has not been properly identified on the Application for Dispute Resolution. With the consent of both parties, the Application for Dispute Resolution is amended to reflect the Landlord in attendance as the Respondent in this matter.

### Issue(s) to be Decided

Should the Tenant be granted more time to apply to cancel a One Month Notice to End Tenancy for Cause and, if so, should that Notice be set aside?

### Background and Evidence

The Landlord and the Tenant agree that:

- The Tenant lived in a different rental unit in this residential complex prior to moving into this rental unit;
- She currently resides in unit #216;
- Rent is due by the first day of each month;
- The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause, via registered mail;
- The One Month Notice to End Tenancy for Cause declares that the tenancy is ending because the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful interest of another occupant

or the landlord, and the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;

- The One Month Notice to End Tenancy for Cause declares that the Tenant must vacate the rental unit by March 31, 2021;
- at approximately 2:00 a.m. on November 14, 2020, fireworks were let off from the balcony of the rental unit;
- the Landlord discussed the November 14, 2020 incident with the Tenant and advised her the behaviour was unacceptable;

The Advocate for the Landlord stated that the Tenant moved into this rental unit on June 01, 2018. The Tenant stated that she moved into this unit in 2016.

The Advocate for the Landlord stated that the One Month Notice to End Tenancy for Cause was mailed to the Tenant on February 08, 2021 and that Canada Post records show that it was delivered on February 26, 2021. The Tenant stated that she picked up the One Month Notice to End Tenancy for Cause from Canada Post on February 26, 2021, shortly after the Advocate for the Landlord informed her it had been mailed.

In support of the One Month Notice to End Tenancy for Cause the Advocate for the Landlord stated that the Landlord is ending the tenancy, in part, because on November 06, 2020 there was loud music being played within the rental unit; pumpkins were thrown off the balcony of the rental unit; and the Tenant was given a warning letter regarding this disturbance, dated November 07, 2020. The Tenant does not dispute this allegation and she explained that her children threw the pumpkins from the balcony, for which they were reprimanded.

A copy of the November 07, 2020 and November 14, 2020 warning letters were submitted in evidence.

In support of the One Month Notice to End Tenancy for Cause the Advocate for the Landlord stated that the Landlord is ending the tenancy, in part, because:

- other occupants of the residential complex reported hearing loud music in the rental unit at 4:00 a.m. on December 13, 2020;
- other occupants of the residential complex reported hearing loud music in the rental unit on December 18, 2020 between 1:00 a.m. and 2:30 a.m.;
- other occupants reported that the Tenant was being loud in the back alley at 4:00 a.m. on December 19, 2020 and that she was loud when she subsequently entered the residential complex; and

- on December 19, 2020 the Tenant was given a warning letter in regard to these three disturbances.

The Tenant acknowledged receiving the letter of December 19, 2020. She stated that she was not home on December 18, 2020 or December 19, 2020 and she advised the Landlord she was not home on those dates after she received the letter of December 19, 2020. The Landlord stated that he does not recall the Tenant if the Tenant told him she was away on those dates, although he acknowledges it is possible.

A copy of the December 19, 2020 warning letter was submitted in evidence.

In support of the One Month Notice to End Tenancy for Cause the Landlord stated that he is ending the tenancy, in part, because he received a report that on January 30, 2021 loud music and shouting were heard in the rental unit, after which he provided the Tenant with a letter regarding this disturbance.

The Tenant acknowledged receiving the letter regarding the January 30<sup>th</sup> disturbance. She stated that the father of her children was visiting, he refused to leave, and when he finally left, he stayed outside of the unit crying and “freaking out”.

A copy of the January 30, 2021 warning letter was submitted in evidence.

In support of the One Month Notice to End Tenancy for Cause the Landlord stated that he is ending the tenancy, in part, because other occupants of the residential complex reported hearing loud music in the rental unit in the early morning hours of February 06, 2021 and February 07, 2021 and that he provided her with a letter regarding this disturbance on February 08, 2021.

The Tenant acknowledged receiving the letter on February 08, 2021. The Tenant stated that she was not home on February 07, 2021 and that on February 06, 2021 she had a friend over, but they were not loud.

A copy of the February 08, 2021 warning letter was submitted in evidence.

The Tenant submitted a letter from an individual who declared she was with the Tenant on February 06, 2021; she and the Tenant arrived at the rental unit at 3:00 a.m.; they remained awake for no more than 2 hours; and they were not noisy or playing loud music.

The Tenant submitted a written submission, dated May 13, 2021, in which she declares, in part, that she has reviewed all of the warning letters and that she can “only confirm that on several occasions my music was loud as I was going through a difficult period” and “the music helped my anxiety”.

The Landlord submitted three letters from other occupants of the residential complex, in which the authors report being disturbed by the Tenant. These letters do not provide the identity of the authors. The Advocate for the Landlord stated that these occupants initially did not wish to provide their identities, but they are now prepared to identify themselves and to testify at this hearing if necessary.

The Tenant stated that she knows who wrote the letters submitted in evidence. The Tenant was advised that if she wishes to question any of the authors of the letters they can be called as witnesses by the Landlord. She stated that she had no questions for the authors.

The Tenant was asked if she would like to respond to the allegations made in the aforementioned letters and she stated:

- she does not yell in her unit;
- she does not throw garbage out her window, although her children have;
- she does not own a bb gun;
- she has not poured beer on anyone's door; and
- she has never heard of a cab driver buzzing anyone's door.

The Advocate for the Landlord stated that he believes the Tenant's guests are responsible for many of the disturbances discussed at these proceedings. He stated that the Tenant does not appear to understand she is responsible for the actions of her guests.

The Tenant stated that she is aware she is responsible for the actions of her guests. She stated that she had a “bad” friend in her life, who she no longer associates with. The Advocate for the Tenant stated that these disturbances occurred during an unstable period in the Tenant's life, that there were no disturbances prior to November of 2020, and there have been no recent disturbances.

The Tenant stated that she has lived in this residential complex for many years and that there were no complaints prior to November of 2020.

The Landlord stated that other occupants have complained about the Tenant's behaviour prior to November of 2020, for which he issued verbal warnings. He stated that the earlier complaints were far less frequent. He stated that some other occupants of the residential complex have complained about her behaviour but they are afraid to come forward because they fear the Tenant's guests.

The Advocate for the Landlord stated that some of the occupants of the residential complex are considering moving as a result of the Tenant. He stated that if the Landlord is granted an Order of Possession, the Landlord would like it to be effective on June 30, 2021, as rent has been accepted for June on a "use and occupancy" basis.

The Advocate for the Tenant submits that the timing of this One Month Notice to End Tenancy for Cause may be connected with a sexual assault investigation involving the building manager's brother, who works in the residential complex.

In her written submission that Tenant declares that on April 29, 2020 she filed a complaint with the RCMP, in which she accused the building manager's brother, who works in the building, of sexual misconduct and that those allegations are currently being investigated.

The Landlord stated that he is aware of the police investigation, and that it is unrelated to the One Month Notice to End Tenancy for Cause.

The Advocate for the Landlord stated that none of the occupants who submitted witness statements are involved in the police investigation, which the Tenant does not dispute.

The Tenant submitted letters attesting to her character and written documents from other occupants of the residential complex who declare they have not been disturbed by her.

### Analysis

Section 47(d) of the *Residential Tenancy Act (Act)* permits a landlord to end a tenancy, by serving proper notice, if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk.

A One Month Notice to End Tenancy for Cause is proper notice to end a tenancy pursuant to section 47 of the *Act*. On the basis of the undisputed evidence, I find that the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause, which declared that the Landlord was ending the tenancy pursuant to section 47(d) of the *Act*.

On the basis of the undisputed evidence, I find that the Landlord mailed a One Month Notice to End Tenancy for Cause on February 08, 2021 and that the Tenant received it on February 26, 2021. I find that the deeming provisions of section 90 of the *Act* are rebuttable provisions. As the evidence clearly shows that the One Month Notice to End Tenancy for Cause was not received until February 26, 2021, I find that the deeming provisions of section 90 are not relevant.

Section 47(4) of the *Act* allows a tenant to dispute a One Month Notice to End Tenancy for Cause by making an application for dispute resolution within 10 days after the date the tenant receives the notice. As the Tenant received the One Month Notice to End Tenancy for Cause on February 26, 2021 and she filed this Application for Dispute Resolution on February 26, 2021, I find that she disputed the One Month Notice to End Tenancy for Cause in accordance with the timeline established by section 47(4) of the *Act*. As such, I find that I do not need to consider the Tenant's application for more time to apply to dispute the Notice.

After considering all of the written and oral evidence presented, I find that the Landlord has provided sufficient evidence to show that the Tenant and/or her guests have significantly interfered with or reasonably disturbed other occupants of the residential complex. I therefore find that the Landlord has grounds to end this tenancy, pursuant to section 47(d)(i) of the *Act*, and I dismiss the Tenant's application to cancel the One Month Notice to End Tenancy for Cause that is the subject of these proceedings.

In determining that the Tenant and/or her guests have unreasonably disturbed other occupants, I was influenced by the testimony provided by the Landlord and the Advocate for the Landlord. I find the testimony they provided in regard to noise complaints received from other occupants was consistent, forthright, and credible. I find the nature, the frequency, and the timing of those complaints constitutes an unreasonable disturbance.

In determining that the Tenant and/or her guests have unreasonably disturbed other occupants, I was further influenced by the letters from occupants of the residential complex, dated March 08, 2021, February 09, 2021, and February 11, 2021. Although

some of the disturbances mentioned in those letters, such as the buzzing of the door by a taxi driver and pouring beer on a door may not be attributable to the Tenant or her guests, it is clear that the authors have been frequently disturbed by loud music and yelling from within the rental unit/balcony. It is clear that all three authors find the disturbances unacceptable and one of them is considering moving if the Tenant remains in the residential complex.

In considering this matter I have placed little weight on the Tenant's submission that she was not home on December 18, 2020, December 19, 2020, or February 07, 2021. I placed little weight on this testimony in, part, because it is somewhat self-serving and, in part, because there is no reliable evidence to corroborate the testimony. Although in a letter from a third party, dated May 01, 2021, the author declares that some of the noise complaints were made when the Tenant was not in the city, the author does not provide the dates of those complaints nor does the author declare how they know the Tenant was not in the city on the date of the complaints.

In the event the Tenant was not home on December 18, 2020, December 19, 2020, or February 07, 2021, one would expect the Tenant would have made that assertion in her lengthy written submission, dated May 13, 2021, which she did not. Rather, her written submission declares that she has reviewed all of the warning letters and that she can "only confirm that on several occasions my music was loud as I was going through a difficult period" and "the music helped my anxiety". I find this portion of her written submission corroborates the evidence of disturbances presented by the Landlord.

In addition to acknowledging playing loud music, the Tenant has acknowledged that she and/or her guests used fireworks on her balcony; that her children through pumpkins off the balcony; and that the father of her children created a loud disturbance on January 30, 2021. I find these are all unreasonable disturbances that could reasonably be expected to disturb other occupants.

In considering this matter I have placed little weight on the letter from the individual who was with the Tenant on February 06, 2021. Even if this friend and the Tenant truly believe they were not loud, I find it more likely than not that they disturbed others. As the friend acknowledges they arrived home at 3:00 a.m. and they remained awake for approximately two hours, it is likely that they disturbed others given the time of day. I specifically note that the author of the letter does not deny playing music, only that they were not "loud" music. In my view, playing music at 3:00 a.m. has the potential of disturbing others and it corroborates the Landlord's submission that others were disturbed on February 06, 2021.



In considering this matter I have placed little weight on the Tenant's submission that there were no disturbances prior to November of 2020. I find this submission is refuted by the testimony of the Landlord, who declared that he received complaints about the Tenant's behaviour prior to November of 2020, albeit less frequently, and that he verbally cautioned her about her behaviour prior to November of 2020. I find that this submission is also refuted by the letter from another occupant, dated February 11, 2021, in which the author declares the disturbances are getting "worse as time goes on", which supports the Landlord's submission there were some disturbances prior to November of 2020.

In considering this matter I have placed little weight on the undisputed evidence that the Tenant has filed a police report naming an individual who works in the building. As the police report was filed in April of 2020 and this One Month Notice to End Tenancy for Cause was not served until February of 2021, I cannot conclude that the issues have any direct connection. Not only is there almost a year between the two incidents, the undisputed evidence is that none of the occupants who have submitted evidence of being disturbed by the Tenant are associated to the police investigation.

In considering this matter I have reviewed the written documents that attest to the character of the Tenant. While I accept there are some individuals who support the Tenant's tenancy and have not been disturbed by her, that evidence does negate the evidence of the occupants who have been disturbed.

While I accept the Tenant's submission that at least some of these disturbances were caused by "bad" friends with whom she no longer associates, I find that extending this tenancy in hopes that she will not make similar errors in judgement is not fair to the other occupants who are clearly being disturbed.

As I dismissed the Tenant's application to set aside the One Month Notice to End Tenancy and I am satisfied the One Month Notice to End Tenancy for Cause complies with section 51 of the *Act*, I must grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

As the Tenant has paid rent for June of 2021, the Order of Possession will be effective June 30, 2021.

Conclusion

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause is dismissed, without leave to reapply.

The Landlord is granted an Order of Possession that is effective at 1:00 p.m. on June 30, 2021. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

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: June 05, 2021

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Residential Tenancy Branch