



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC-MT, MNDCT, RP, LRE, PSF, OT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"):

- for more time to apply to cancel the eviction notice;
- to cancel a One Month Notice to End Tenancy for Cause dated February 28, 2021 ("One Month Notice");
- for a monetary claim of \$400.00 for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement;
- for an Order for repairs to the unit, site, or property, having contacted the landlord in writing to make repairs, but they have not been completed;
- to suspend or restrict the Landlord's right to enter;
- for an order to provide services or facilities required by the tenancy agreement or law; and
- another matter not listed on the Application for dispute resolution.

The Tenant and the Landlord 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. Three witnesses, two for the Landlord, T.W. and A.S., and one for the Tenant, R.C., were also present and provided affirmed testimony.

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.

The Landlord confirmed that he had received the Notice of Hearing documents and

evidence from the Tenant and that he had time to review them. The Landlord said that he served the Tenant with his documentary evidence, and the Tenant acknowledged having received this. However, the Landlord said he did not serve the Tenant with copies of the video recordings he submitted to the RTB. Accordingly, I advised the Parties that I would not be considering the Landlord's recordings in making my Decision.

### Preliminary and Procedural Matters

The Tenant provided the Landlord's email address in the Application and the Landlord confirmed this address in the hearing. However, the Tenant did not provide her email address in the Application, and she could not find it after a search during the hearing. As a result, I advised the Tenant that the Decision would be mailed to her at the rental unit address. The Parties confirmed their understanding that the Decision would be emailed to the Landlord and mailed to the Tenant, and that any Orders would be sent to the appropriate Party in this manner.

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 the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated different matters of dispute on the application, the most urgent of which is the application to set aside a One Month Notice. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenant's request to set aside the One Month Notice and the recovery of the filing fee at this proceeding. Therefore, the Tenant's other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

Section 55 of the Act states that if a tenant's application to cancel an eviction notice is unsuccessful and 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

- Is the Tenant eligible for more time to apply to cancel the One Month Notice?

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

### Background and Evidence

The Parties agreed that the tenancy began on September 1, 2020, with a monthly rent of \$650.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$325.00, and no pet damage deposit.

The Parties agreed that the Landlord served the Tenant with a One Month Notice that was signed and dated February 28, 2021, which had the rental unit address, and was served in person on February 28, 2021. The One Month Notice has an effective vacancy date of March 31, 2021, and it was served on the grounds that the Tenant:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- put the Landlord's property at significant risk; and
- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

Under the heading: "Details of Cause" on the One Month Notice, the Landlord wrote:

Since September 2020, [the Tenant] has been making loud noises after 12 am and even up to 6 am. It has been happening frequently. She lost her keys and I give my spare keys to her and asked her to cut the keys and give me the spare key back, and she never gives the keys back to me.

### **More Time to File an Application**

As I advised the Parties in the hearing, the first matter for me to consider is the Tenant's application for more time to apply to cancel the One Month Notice. The Parties agreed that the Tenant was served with the One Month Notice on February 28, 2021. Section 47(4) of the Act states:

**47 (4)** A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

This means that the Tenant had until March 10, 2021 to apply to cancel the One Month Notice. However, the Tenant applied for dispute resolution on March 25, 2021, which was 15 days late.

Section 66 of the Act states that I may extend a time limit established by the Act only in exceptional circumstances. In the hearing, the Tenant said that she did not file an Application on time, because she could not afford to, and she was applying to Social Services for the filing fee. However, as I explained to the Tenant, she could have applied to the RTB to have the fee waived. The Tenant said she did not know this.

Policy Guideline #36, "Extending a Time Period", states the following:

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* provide that an arbitrator may extend or modify a time limit established by these Acts ***only in exceptional circumstances***. An arbitrator may not extend the time limit to apply for arbitration beyond the effective date of a Notice to End a Tenancy and may not extend the time within rent must be paid without the consent of the landlord.

### **Exceptional Circumstances**

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter on hospital letterhead,

stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim the party has brought the application as soon as practical under the circumstances .

[emphasis in original]

The Tenant's reason for being over two weeks late in applying to cancel the One Month Notice was because she was unaware that the RTB will waive the application filing fee in appropriate situations. I find that this illustrates that the Tenant was unfamiliar with the correct procedure. I find that the Tenant's reason for applying late parallels the second and third examples above of what does not constitute an exceptional circumstance.

There is no evidence before me that the Tenant asked someone at the RTB if this was an option or said that she could not afford the filing fee. There is no record in our system that the Tenant asked this question. I find the Tenant's failure to investigate her options in this regard demonstrates that the late Application was contributed to by the conduct of the Tenant. I find that the Tenant has not brought the Application as soon as practical under the circumstances.

Further, although I may dismiss the Application on this basis, I will go on to show how the Tenant's Application does not have merit and must be dismissed on that basis, as well.

### **Application to Cancel the One Month Notice**

In the hearing, the Landlord said:

Since she moved in, she always makes loud noises at midnight until the morning. The other tenants – I even can hear it. I go downstairs and ask [the Tenant] to please keep quiet. At the beginning she said okay, but sometimes she even yells to me: ‘Get the fuck out of my way.’ The other tenants complain about that.

Before Christmas, they wanted me to let her out. And during that time, we also consider it, but this is Christmas time, we didn’t want [the Tenant] to be homeless, and we decided not to evict her at that time. It has become worse and worse.

On November 3, 2020, [the Tenant] was very, very aggressive to another tenant, [L.], and so like in one week, [L.] just moved out. That’s why also we are always talking to [the Tenant], but I know I should write her something to let her know more formally. So, in December sometime, I wrote a letter to [the Tenant] saying I wish her to be quiet, and don’t fight with other tenants. Actually – I think December 10<sup>th</sup> I wrote that letter to her and after this, she’s still behaving like before, so that’s why I gave her One Month Notice on February 28, [2021].

The Tenant said:

In fact, [the Landlord] came down here several times screaming at me, and this woman he is talking about – he gave me the notice over - that [T.] came downstairs screaming at me, and I came back in, I forgot something, I tried making a cup of coffee and she was screaming. How was I bothering them? [R.C.] shut me up. The police never spoke to him, because it happened about 5:30 - 5 45 a.m. and he was out when the police came. She came downstairs from her unit, because it is a shared laundry. She came screaming and demanding that their days were Saturday. I didn’t care. I do the laundry when the machines aren’t busy.

I asked the Tenant about the incident the Landlord said happened with the former tenant, L. The Tenant said:

Her son was trying to throw my coffee maker on the floor, because she locks the child inside when she goes out for a smoke. I said I didn’t feel comfortable to be alone with the child – he’s about 4 years old. The counter doesn’t have any space and [the coffee maker] was on the microwave, which was on the stand on the floor. There’s no room for appliances on the counter.

The child was throwing it on the floor, and I said he had to be with his mother. On another occasion, they locked the child in the basement, I told her she needs to watch her child.

In answer to the Landlord's testimony that the Tenant makes noise at or after midnight, the Tenant said:

I was cooking past midnight. The fire alarm goes off whenever you open the oven. It'll go off at any time. Also, [L.] complained about it. There was no yelling or swearing in the evening. I just told her to control her child.

I asked the Tenant if she was ever swearing or yelling at night loudly in the house, and she said: "I was once, because she was yelling at me. I swore back and said stop bothering me, for fuck's sake."

The Landlord said: "She lies. She always makes noise. Basically, the mp4 [submission] – you can see what her behaviour it like. I never yell to her, but she yells to everybody. She is lying." I reminded the Landlord that I would not be considering the mp4 submissions, because he had not served copies of this to the Tenant.

The Landlord's witness, T.W., said:

I live above her. My room is right above her. The family. [the Landlord's] family and him are the quietest. The only voice, I didn't hear [L.] and her son. The only voice is [the Tenant]. The only time we don't hear her is when she's sleeping or not at the house. The neighbour next door even yelled at her to shut up. There's nobody else. I tell her there's nobody yelling at you, [Tenant]. She mirrors what we're telling her.

[The Landlord] is the most polite family and they don't speak English – he is very mousy when he speaks.

The Witness, A.S., said:

I work six days a week – in the middle of the night I'm woken from screams from [the Tenant] downstairs, and things breaking – very frequently loud noises. It makes it difficult for me to concentrate at work. I might lose my job because of her.

The Tenant's Witness said:

I think that people are down here doing laundry at 3 a.m. [The Tenant's] noises? Just cooking in the evening. A couple of times her and I have had an argument about house issues. I live on the other side of the house, but I'm on this side a lot, because I don't have a TV.

I asked the Tenant's Witness if he has ever heard her yelling or swearing in the middle of the night. He said: "If I go to my place to sleep; I don't wake up very easily. I'm dead to the world."

I offered the Parties an opportunity to make last statements, which went on for ten more minutes past the end of the scheduled hearing time.

The Landlord said:

Basically, I don't want to give people a hard time. She made a noise for a long time, and I just made a decision to evict her from February. I try to be nice to everybody. She never changed. I just want her to peacefully move out and find somewhere else.

The Tenant said:

I would like to bring up the fact that the Landlord allows me to have a garden and ... people put vinegar and . . . in the water and we ate that. What he witnessed was the other people. I have a witness stating the opposite of what they're saying. I had to rip the garden out, because they put poo in there. They also rinsed the garden bins into the garden I was having. The other tenant was spitting on stuff. I know, because you can smell it. We ate vegetables from that and got sick. The grandmother stomped all over my plants and I called the police. The woman was hanging out her window recording me and screaming her head off at me.

The Landlord's Witness, T.W., said:

At 5:30 in the morning, my window is right there. She is talking to herself. I said it's not even 6 in the morning. When I address her, she gets louder. [The Landlord] promised her a garden. At 1030 at night she started doing her garden, but that's . . .

[The Landlord] cleans his garbage and recycle bins into that area. It slopes into



that space, so it's not a win-win situation. She placed it where [the Landlord] places his garden bins. Not a good place to start a garden. There was another space on the other side; it would have been safer for her. At 5:30 in the morning, she's removing stones with a shovel. The boys have two jobs here and they're exhausted. She started shovelling and making those gardens at 5:30 in the morning, we're all dealing with her yelling profanities, and she's not even on the phone.

The Landlord's Witness, A.S., said:

I just want to say that this behaviour has affected the mental health of everyone in the house. We are getting insomnia - we can't sleep. One of the house mates is working in construction. He shared that he sometimes falls asleep, and he's working with industrial-sized equipment. I also can't concentrate sometimes. That is essentially what is happening here.

I started to end the hearing, as the Parties had made their last statements, and because it was already past the scheduled end time for the hearing. At this point, the Tenant questioned me about her Witness not having given all of his evidence about how the other tenants treat the Tenant. I reminded the Tenant that the One Month Notice that she disputes was based on her behaviour, and not the other tenants' behaviour. However, the Tenant was adamant that her Witness had not had a chance to give all of his evidence, therefore, I allowed him to speak again. I also repeatedly asked him about how the other tenants treat the Tenant to give him an opportunity and the idea to comment on the evidence that the Tenant appeared to want him to address.

In answer to my question to him about how the other tenants treat the Tenant, and if they yell at her, the Tenant's Witness, R.C., said:

They were that evening – the date when they phoned the police. It happened in the morning at about 5:30 or 6 a.m.

[T.W.] came downstairs and [the Tenant] was outside. She had come back in, and I wasn't in the room, but I could hear from my room that someone was screaming, but it wasn't [the Tenant]. When I came to the laundry room where everyone was standing, she said to me to tell [the Tenant] to shut the fuck up. I was looking around in a daze. [The Tenant] volleyed something back. It's not just [the Tenant] yelling in the evening.

I asked the Tenant's Witness if there was anything else that he wanted to say about this situation, and he said:

There's been quite a few issues I don't think have been very fair for [the Tenant] to have a voice. I haven't heard her yelling about the mould late at night. I was here when she was painting, and we couldn't get the paint to stick to the mould. After using mould-be-gone, but . . .

I interrupted the Witness to ask him to focus on the way that other people have treated the Tenant. I asked him if he was aware of anyone yelling at the Tenant, and he said: "Not to her face."

### Analysis

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

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, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy. Section 47 of the Act sets out the grounds on which a landlord may end a tenancy for cause.

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

. . .

(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,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

. . .

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

In this case, the Landlord alleged that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord, and adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant.

I have before me testimony from the Landlord and his two witnesses who consistently said that the Tenant frequently yells and swears and/or makes other loud noises between midnight and 6 a.m. In contrast, the Tenant testified that it was other tenants and the Landlord who yell at her. However, I find that the Tenant's witness did not support her claim in this regard. The Tenant's witness said that his unit is on the other side of the residential property and that he sleeps very soundly. He said: "If I go to my place to sleep; I don't wake up very easily. I'm dead to the world." I infer from this that it is unlikely that he would hear the Tenant if she were screaming and/or making other noise in her unit in the other side of the residential property at night or in her garden early in the morning. I pressed the Tenant's Witness with questions about how the other tenants and the Landlord treat the Tenant and he said that no one yells at her to her face.

In contrast, the Landlord's witnesses consistently stated that the Tenant disturbs their sleep at night by yelling profanities and making other loud noises in the middle of the night. I find that the preponderance of evidence before me supports the Landlord's allegations against the Tenant in the One Month Notice. Based on the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet his burden of proof on a balance of probabilities, and to support the validity of the One Month Notice. I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act as to form and content. I find that the tenancy ended on the effective vacancy date of the One Month Notice, which was March 31, 2021. I find that the Tenant has been overholding the rental unit since then.

Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession. I, therefore, grant the Landlord an **Order of Possession** to be served on the Tenant as soon as possible, and which is **effective two days** after deemed service on the Tenant.

### Conclusion

The Tenant is unsuccessful in her Applications for more time to apply to cancel the One Month Notice, and for an order cancelling the One Month Notice. I dismiss the Tenant's Application wholly, as I find that the One Month Notice is valid and enforceable and that the tenancy ended on March 31, 2021.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after deemed 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: July 14, 2021

---

Residential Tenancy Branch