



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding  
Nanaimo Affordable Housing Society  
and [tenant name uppressed to protect privacy]

## **DECISION**

Dispute Codes      For the tenant's application: CNC  
For the landlord's application: OPC, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47.

The landlord's application pursuant to the Act is for:

- an order of possession under the Notice, pursuant to sections 47 and 55; and
- an authorization to recover the filing fee, under section 72

Tenant VE (the tenant) and the landlord attended the hearing. The landlord was represented by agents JR (the landlord) and JD. The tenant was assisted by agent MM. Witness for the tenant MO also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

### Preliminary Issue – service of the tenant's application

The tenant affirmed she served the notice of hearing and the evidence in July 2021 and a second package of evidence 14 days before the hearing. The landlord confirmed receipt of both packages in person.

Based on the testimony offered by both parties I find the tenant served the notice of hearing and the evidence in accordance with section 89(1)(a) of the Act.

The landlord stated he served his response evidence by registered mail sent on October 08, 2021. The tenant confirmed receipt of the package on October 15, 2021 and testified that she did not have time to review the response evidence.

Section 90 of the Act states:

A document given or served in accordance with section 88 [how to give or serve documents generally] or 89 [special rules for certain documents], unless earlier received, is deemed to be received as follows:

- (a) if given or served by mail, on the fifth day after it is mailed;
- (b) if given or served by fax, on the third day after it is faxed;
- (c) if given or served by attaching a copy of the document to a door or other place, on the third day after it is attached;
- (d) if given or served by leaving a copy of the document in a mailbox or mail slot, on the third day after it is left.

The tenant is deemed served the landlord's response evidence on October 13, 2021, per section 90(a) of the Act.

Rule of procedure 3.15 states:

[...]

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, **the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.**

(emphasis added)

The hearing was on October 18, 2021. The landlord's response evidence deemed served on October 13, 2021 is excluded, per Rule of Procedure 3.15.

Preliminary Issue – service of the landlord’s application

The landlord said he served the notice of hearing and the evidence by registered mail in July 2021. The tenant confirmed receipt of the package.

Based on the testimony offered by both parties I find the landlord served the notice of hearing and the evidence in accordance with section 89(2)(b) of the Act.

Issues to be Decided

Is the tenant entitled to cancellation of the Notice?

If the tenant’s application is dismissed, is the landlord entitled to an order of possession under the Notice?

Is the landlord entitled to an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant’s and landlord’s claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

The tenant affirmed the tenancy started in July of 2014 or 2015. At the outset of the tenancy the landlord maybe collected a security deposit of almost \$400.00.

The landlord stated the tenancy started on July 01, 2016. The landlord did not collect a security or pet damage deposit.

Both parties agreed that monthly rent of \$350.00 is due on the first day of the month.

The landlord attached the Notice to the tenant’s front door on June 16, 2021. The tenant confirmed receipt of the Notice on June 16 or 17, 2021. The reason to end the tenancy is: 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 details of the Notice are:

Tenant is in violation of RTA clause

28 - Protection of tenant's right to quiet enjoyment- A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

b) Freedom from unreasonable disturbance;

d) Use of common areas for reasonable and lawful purposes; free from significant interference

[Landlord] staff received complaints regarding [Tenant] assaulting another tenant with a broom (March 9th, 2021) and issued communication (March 22nd, 2021) to correct behaviour, included in evidence package.

[Landlord] staff received complaints regarding [Tenant] verbally abusing and assaulting tenants on the property (May 4th, 2021) and issued warning communication to tenant (May 6th, 2021) that behaviour needed to be corrected or would face eviction, included in evidence package.

[Landlord] staff received further complaints regarding tenants nuisance behaviour at property at the end of May 2021, early June 2021, included in evidence package.

The Notice is dated June 16, 2021 and the effective date is July 31, 2021. The tenant continues to occupy the rental unit. The tenant submitted her application on June 17, 2021.

The landlord testified the tenant is a nuisance, she is responsible for ongoing harassment and the other tenants do not have their right to quiet enjoyment because of the tenant.

The landlord said tenant LI moved to the rental building in April 2019, LI is a "problematic tenant" and has had several disputes with the tenant. The landlord affirmed the tenant swung a broom against LI on March 22, 2021. The landlord warned the tenant in writing and submitted a copy of the warning letter:

We write you today to inform you that multiple complaints have been received relating to your actions towards other tenants. "There was a commotion outside and I saw [tenant] swing the broom at LI."

The tenant confirmed receipt of the March 22, 2021 warning. The tenant stated LI is her next door neighbour and they do not have a good relationship because LI stole her bird feeder. The tenant testified that on March 22, 2021 she had a commotion with LI but did not assault her. The tenant said she did not have disputes with her neighbours until LI moved in.

Witness MO affirmed he lives in the same rental building and he observed the tenant asking LI to be quiet and go away on March 22, 2021. The tenant did not assault LI.

The landlord stated the tenant had an incident with another tenant on May 04, 2021 and he served the warning letter dated May 13, 2021:

We write to you today to inform you that multiple complaints have been received relating to verbal harassment of other tenant.

"[tenant] was drunk, 'reeking alcohol' and continually yelled at me and tried to touch me"

Please note this report constitutes a serious and repeated violation of the Residential Tenancy Act specifically clause 28. As a tenant with the [landlord], you are obligated to behave in a manner consistent with the RTA:

[...]

As these reports are continuous and the inappropriate behaviour has not been addressed, [the landlord] will be issuing no further warnings. If this behaviour continues, [the landlord] will proceed to enforcement action through the Residential Tenancy Branch. Please take the time to review the Residential Tenancy Act and adjust your behaviour accordingly .

The tenant confirmed receipt of the May 13, 2021 warning. The tenant testified tenant RN parked his car in front of the laundry room and she politely asked him to park his car somewhere else. Tenant RN yelled at the tenant. The tenant was upset but not drunk.

Witness MO said that he observed the May 13, 2021 incident, the tenant was polite and tenant RN was aggressive.

The landlord submitted into evidence an email dated May 13, 2021 sent by another tenant reporting an incident with the tenant:

Tuesday, May 11 at 5:03pm [redacted] first heard water on her window splashing and then on her front door. She opened her door and [tenant] was very intoxicated spraying her door with the hose. She asked her what is she doing? [tenant] swore and yelled at her.

The landlord affirmed the tenant sprayed LI's front door with water on June 14, 2021 and he served the warning letter dated June 14, 2021:

We write to you today to inform you that multiple complaints have been received relating to nuisance and disruptive behaviour towards other tenants.

"Spraying my front door with water. [tenant] was yelling and swearing at me, she seemed intoxicated or high. [tenant] was being very disrespectful, hating and very nasty to myself and guests."

Please note these reports constitute a serious and repeated violation of the Residential Tenancy Act specifically clause 28. As a tenant with the [landlord], you are obligated to behave in a manner consistent with the RTA:

[...]

As [the landlord] has contacted you repeatedly in the past to address these behaviours with no change, we are now forced to issue a 1-month notice to end your tenancy. In addition to this letter, you will have received a 1-month notice to end your tenancy for cause package. If you feel your eviction is unwarranted, please follow the policies and procedures outline in the accompanying package.

The tenant stated on June 14, 2021 she was watering the plants and she did not spray LI's front door.

The landlord testified he verbally warned the tenant several times in 2021.

Agent MM said she is a social worker, on September 21, 2021 she started assisting the tenant, the tenant has been accountable to her and she will continue to support the tenant.

The tenant affirmed she has been treated for anxiety and depression because of the issues with LI. The tenant submitted into evidence a letter signed by her physician on July 02, 2021:

I am [tenant's] physician, and have been in close touch with her over many years. We have nearly weekly phone appointments as a support to her for her anxiety and depression. Many weeks [tenant] is in a lot of stress and anxiety due to difficulty with a particular neighbor (LI) at her housing unit. The tenant feels unsafe in her own home due to the negative experiences she is having with this individual. I have heard about theft from the tenant's back yard, banging on the walls, and multiple calls to the police, as well as other negative interactions. The tenant has been leaving her home for prolonged visits to her parents to get away from this situation, as she has so much stress at her own home currently. This situation has been really negatively impacting the tenant since July 2020.

The tenant submitted into evidence a petition of support signed by 10 residents of the rental building. It states: "We, the undersigned, have never had any problems with the tenant and find her a kind and considerate neighbour". The petition lists the printed names of 10 residents, their unit number and their signatures. The landlord stated he cannot verify the names of the tenants that signed the petition and that he received complaints against the tenant from some of the tenants that signed the petition.

The landlord testified he received an email from the police stating that the police have 35 complaints against the tenant in 2021 and the police are considering declaring the tenant's unit a nuisance property. The tenant said this email does not exist and that most of the complaints against her are from LI. Agent MM affirmed the 35 complaints are against the tenant and other tenants.

The tenant stated the landlord does not investigate the complaints against her. The landlord testified he investigates the complaints against the tenant.

The landlord said the tenant is not able to continue the tenancy. The tenant affirmed she is trying her best to live a peaceful life and avoid problems.

### Analysis

Based on the tenant's testimony, I find the tenant received the Notice on June 17, 2021. I find that the tenant's application was submitted before the ten-day deadline to dispute the Notice, in accordance with Section 47(4) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct and sufficient cause to end the tenancy.

Section 47(1)(d)(i) of the Act states:

- (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

I find the sworn testimony offered by the tenant and witness MO has more credibility than the landlord's testimony and the letters regarding the March 22 and May 13, 2021 incidents. The tenant and witness MO both answered my questions and provided a detailed, coherent and convincing testimony.

Based on the convincing testimony offered by the tenant and witness MO, I find the tenant had a commotion with LI on March 22, 2021 but did not assault her.

Based on the convincing testimony offered by the tenant and witness MO, I find the tenant did not harass another tenant on May 13, 2021.

Based on the May 13, 2021 email, the warning letter dated June 14, 2021 and the convincing testimony offered by the landlord, I find the tenant sprayed LI's front door with a hose on May 11 and June 14, 2021.

I note the landlord accepted that tenant LI is a "problematic tenant" and that the tenant admitted she is undergoing medical treatment because of her issues with tenant LI. I find that agent MM's testimony was credible.

I find the petition of support submitted by the tenant is a credible document, as it clearly identifies the ten signatories and their unit number.

Based on the landlord's convincing testimony, I find the tenancy started on July 01, 2016.

Considering that the tenancy started five years before the Notice was issued, the petition of support, and that the tenant is seeking medical treatment, I find the incidents on May 11 and June 14, 2021 are not serious enough to end the tenancy under section 47(1)(d)(i) of the Act.

The parties offered conflicting testimony about the police email regarding 35 complaints against the tenant. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

A copy of the email was not accepted into evidence. I find the landlord failed to prove, on a balance of probabilities, that the police emailed the landlord stating there are 35 complaints against the tenant.



Thus, I find the landlord failed to prove, on a balance of probabilities, the grounds of the Notice. Accordingly, the Notice dated June 16, 2021 is cancelled and of no force or effect.

The landlord must bear the cost of the filing fee, as the landlord was not successful.

I warn the tenant that she may be served a new one month notice to end tenancy if she has another incident.

### Conclusion

The One Month Notice dated June 16, 2021 is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

The landlord's application for an authorization to recover the filing fee is dismissed without leave to reapply.

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: October 28, 2021

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Residential Tenancy Branch