



# 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 scheduled to convene at 9:30 a.m. on December 2, 2021 concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause and to recover the filing fee from the landlords for the cost of the application.

The tenant and one of the named landlords attended the hearing, however the tenant didn't attend until 9:49 a.m. after the hearing had commenced. The landlord gave affirmed testimony, but the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony. Therefore, the tenant was not present during the landlord's testimony.

The tenant also gave affirmed testimony, and the landlord was given the opportunity to question the tenant, and the parties were given the opportunity to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Have the landlords established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reason for issuing it?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on March 15, 2021 and the tenant still occupies the rental unit. Rent in the amount of \$1,350.00 is payable on

the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$700.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is an apartment in a small complex, and the landlords do not reside on the property. A written tenancy agreement exists, but a copy has not been provided for this hearing.

The landlord also testified that on July 28, 2021 the landlord personally served the tenant with a One Month Notice to End Tenancy for Cause, and a copy has been provided as evidence for this hearing by the tenant. It is dated July 28, 2021 and contains an effective date of vacancy of August 31, 2021. The reason for issuing it states:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified that the Notice was issued because the tenant has been obnoxious, irrational and disrespectful to a neighbouring tenant, and has been looking into her window and scaring her. It happened more than once, and the neighbouring tenant mentioned it to the landlord more than once, and has called the landlord worried for herself, and was really stressed. The landlord's spouse tried to deal with it.

Another lady provided a letter to the landlord indicating that the tenant had made sexual comments, and a copy of the letter has been provided for this hearing.

The landlords asked the tenant to stop, and tried to talk to the tenant and the tenant would refuse to open the door. The tenant was losing apartment keys left and right, kept the balcony door open and shady people came up the balcony to go into the tenant's apartment when he wasn't there. Other tenants are uncomfortable and don't feel safe.

The tenant threatened to attend at the landlords' house, insinuating an assault. The landlord's spouse has a medical issue and a copy of a note from a physician has been provided for this hearing.

**The tenant** testified that he and his wife have separated, and are working at getting back together. The landlord made the tenant's wife sign a letter saying that the tenant's wife would not reside there again. Police have been called 6 or 7 times randomly, but have never taken any action; there's been no reason for them to be at the apartment.

The tenant is not in town, but out of the Province working and hasn't been at the rental unit since August 16, 2021.

All are false accusations. There was never a party at the rental unit, neither the tenant nor his wife use drugs, and the landlords have never provided any breach notices to the tenant.

As you walk into the building, there is a large bay window facing the street, and in order to not look at that window, a person would have to walk backwards; it's unavoidable.

The tenant climbed onto the building because the landlord wouldn't give the tenant a key and the tenant's wife had the key. There was a court order and the tenant couldn't get the key from his wife. If someone else was on the balcony, the landlords should call the police.

The tenant's wife does not want to return to the rental unit, but the tenant needs to continue to occupy it for his kids.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause (the Notice) and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute.

I have reviewed all of the evidentiary material, including letters from neighbouring tenants. The first letter is undated and speaks of the neighbouring tenant being annoyed at the comments made by the tenant about another neighbouring tenant, and that the tenant is a jerk. It also states that loud music from the tenant's truck continued well into the night, day in and day out. It states that the days were much quieter after the tenant went away to work, and the writer moved away a few weeks later at the end of April. Largely, it reiterates events as told to the writer by someone else.

The next letter is from a neighbouring tenant dated July 24, 2021 states that the writer's right to quiet enjoyment is being violated due to a high volume traffic of drug users, finding paraphernalia on the property out the writer's front window, the tenant looking in the window of the writer, smoking on the property on the deck, climbing on the deck as well as others climbing on the deck, and blasting music in the tenant's vehicle.

Some of the landlords' evidence appears to be notes taken by a landlord including information from the Residential Tenancy Branch and notes dated in August, 2021. I accept that similar evidence might be relevant to illustrate a pattern of events, but the issue before me is not whether or not the landlord had cause to issue the notice ending the tenancy due to incidents after it was issued, but whether or not the landlords have established that the landlords had cause at the time of its issuance on July 28, 2021.

The reason the Notice was issued states:

- 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 Event(s) section states: "The Tenant has used loud and foul language when addressing to his children while in the yard in the presence of others tenants. The Tenant has peeked through the window of neighbour at times. Other long term tenants feel unsecure and threatened in his presence."

Perhaps the tenant is a jerk, but that's not a reason to end the tenancy. To uphold the Notice, I must be satisfied that any interference was significant enough to warrant ending the tenancy, or any disturbance caused by the tenant was unreasonable enough to warrant ending a tenancy.

There is no evidence that the landlords ever asked the tenant to turn down the music, although the landlords spoke to the tenant asking that the tenant stop, but I'm not clear what the tenant was asked to stop doing. The landlords' notes indicate that the parties had a meeting, but that was when the Notice was issued.

The tenant testified that in order to not look into the neighbour's window when going into the rental unit, a person would have to walk backwards. If another occupant complains about such privacy issues, the landlords should provide blinds or something similar.

In the circumstances, I am not satisfied that the landlords have established that the loud music or other incidents warrant ending the tenancy, and I cancel the One Month Notice to End Tenancy for Cause.

The *Residential Tenancy Act* also allows me to make any orders that may arise with respect to a tenancy. I order the tenant to comply with the *Residential Tenancy Act* by refraining from playing music loud and climbing on the balcony and preventing guests from playing music loud and climbing on the balcony.

Since the tenant has been successful the tenant is entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the tenant in that amount. I order that the tenant be permitted to reduce rent by that amount for a future month, or may otherwise recover it by filing the order with the Provincial Court of British Columbia, Small Claims division as a judgment.

### Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated July 28, 2021 is hereby cancelled and the tenancy continues.

Pursuant to Section 62 (3) of the *Residential Tenancy Act* I hereby order the tenant to comply with the *Act* by refraining from playing music loud and climbing on the balcony and preventing guests from playing music loud and climbing on the balcony.

I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant may reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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: December 06, 2021

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Residential Tenancy Branch