



# 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 suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OPC, FFL

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applies for an Order cancelling a notice to end tenancy - Section 46.

The Landlord applies for:

1. An Order of Possession - Section 55; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirm receipt of each other's evidence and that no recording devices are being used.

### Preliminary Matter

The Tenant objects to one of the persons identified as the landlord's agent and states that they are only a support worker. The person states that they are a support worker employed by the Landlord and that they carry out acts for the Landlord such as dealing with tenancy agreements.

Section 1 of the Act defines a landlord as including the owner's agent or another person who, on behalf of the landlord, exercises powers and performs duties under this Act, the

tenancy agreement or a service agreement. Given the Landlord's evidence of carrying out duties in relation to the tenancy agreements I find that the person objected to by the Tenant is a landlord under the meaning of the Act and therefore may represent the Landlord as an Agent at the hearing.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy in a different unit started on March 1, 2005, and then in the current unit in the summer of 2005. Rent of \$350.00 is payable on the first day of each month. At the outset of the initial tenancy the Landlord collected \$162.50 as a security deposit and this deposit was carried over to the current tenancy. The Landlord gave the Tenant a one month notice to end tenancy for cause dated December 24, 2021 (the "Notice"). The Notice sets out as the reason that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord or has put the landlord's property at significant risk. The Notice sets out details that indicate that the Tenant's guests have caused noise and disturbances.

The Landlord submits letters of complaint from two tenants or warning notices to the Tenant for the period January to December 2021. The Landlord states that the Tenant's guests have caused significant risk to the Landlord's property by allowing guests to jump over a balcony leaving the building with security issues.

The Landlord states that two tenants have complained about noise from the Tenant, their guests or dogs of the guests. One tenant complains about a dog barking on March 26, 2021, and October 29, 2021. Another tenant complains that on November 1, 2021,

the Tenant was talking loudly while outside the unit and of seeing persons entering the Tenant's unit with luggage. The Landlord states that the Tenant has on at least two occasions used the laundry facility for the better part of a day leaving other tenants unable to access the facility during those time. The Landlord states that the tenancy agreement provides use of laundry facilities and that although there is an understanding that the Tenant will make reasonable use of those facilities, nothing in the tenancy agreement sets out details for the use of the laundry facility. The Landlord notes that on one occasion butts were left in the laundry. The Landlord states that there has been drug use inside the Tenant's unit however the Landlord confirms that it has no witness evidence of such drug use. The Landlord states that on one occasion the Tenant was seen to urinate over their balcony. The Landlord confirms that they are not seeking to end the tenancy due to an unreasonable number of occupants sand that they are only ending the tenancy due to the disturbances by the guests.

The Tenant denies causing any significant interference or unreasonable disturbance and argues that the Landlord has not met the burden required to end the tenancy. The Tenant states that there is lots of noise in the building from other tenants, from drumming and singing to playing on a computer loudly. The Tenant states that they have never complained about these noises. The Tenant states that while they have been told they are loud they are trying to keep the peace.

The Landlord states that all the tenants in the building have either mental or physical disabilities and for this reason the Landlord has hired tenant support workers. The Landlord states that as the tenants are all vulnerable their safety and security are important. The Landlord argues that the Tenant's guests are posing a significant risk to the other tenants' safety and security. If the Notice is found to be valid the Landlord seeks an order of possession to be effective April 30, 2022.

### Analysis

Section 47(1) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia, 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, or
- put the landlord's property at significant risk;

While the Landlord has provided evidence of two tenants being disturbed by the Tenant or the Tenant's guests, as there is only evidence of three such occurrences over a one-year period, I find that these disturbances are only periodic in nature and not evidence of anything significant or unreasonable. The Landlord has not provided any evidence that the Tenant or its guests have caused any significant risk to the Landlord's property by jumping over a balcony or any other activity. While the Landlord argues that the guests are a risk to the other tenants' security and safety, there is no evidence from any other tenants of such risk. The Landlord's evidence is that these tenants have only complained about the periodic noise.

As the tenancy agreement provides the Tenant with use of the laundry facilities without any restrictions, I do not consider that the Tenant's use of those facilities over the better part of a day on a couple of occasions can be a reason for eviction. Further while this usage may be an interference with other tenants' usage in some circumstances, there is no evidence that this usage was carried out over a long-term resulting in any significant interference with other tenants' right of usage.

The remaining documentary evidence of the Landlord refers only to the issue of guests or occupants and do not set out any disturbances from these guests or occupants. The Notice does not include as a reason that the Tenant has an unreasonable number of occupants and there is nothing in the Act or tenancy agreement about guests or guest

restrictions. For the above reasons I find that the Landlord has not met the burden of proving that the Notice is valid for its stated reasons. I find that the Tenant is therefore entitled to a cancellation of the Notice and the tenancy continues. The Landlord's application is dismissed.

### Conclusion

The Notice is cancelled, and the tenancy continues.

The Landlord's application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 09, 2022

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Residential Tenancy Branch