



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## DECISION

Dispute Codes      **CNC**

### Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act.

The hearing was conducted via teleconference. The Landlord's Housing Operations team, CS, JD and EH, and the Tenant, KM, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenant with the One Month Notice on February 18, 2022 by posting the notice on the Tenant's door. The Tenant confirms receipt of the One Month Notice. I find the One Month Notice was deemed served on the Tenant on February 21, 2022 according to Sections 88(g) and 90(c) of the Act.

The Tenant confirmed that he personally served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on March 10, 2022 (the "NoDRP package"). The Landlord confirmed receipt of the NoDRP package. I find that the Landlord was served with the NoDRP package for this hearing on March 10, 2022, in accordance with Section 89(1)(a) of the Act.

### Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's One Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on August 1, 2020. Monthly rent is \$415.00 payable on the first day of each month. A security deposit of \$300.00, and a pet damage deposit of \$300.00 were collected at the start of the tenancy and are still held by the Landlord.

The One Month Notice stated the reason why the Landlord was ending the tenancy was because the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and the tenant has failed to comply with a material term of the tenancy agreement, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. The effective date of the One Month Notice was March 31, 2022.

The Landlord provided further details of the causes to end this tenancy as:

*The escalating amount of traffic to [rental unit address] has significantly interfered with or unreasonably disturbed another occupant or the landlord. Aug. 16/20, excessive traffic & noise, Oct.21/21, a guest was found sleeping in laundry room; Feb.2/21 a set of blinds were thrown from balcony; Feb. 14/22, a woman was throwing rocks at his terrace, but mistakenly hit another window, Feb. 17/22 multiple complaints about excessive noise the night before. Due to the ongoing consistent violations, we are forced to serve a 30-day notice.*

The Landlord testified that in 2020, they received multiple complaints from tenants for conduct of excessive traffic and harassment and an unsafe use of residential property. The Landlord uploaded multiple letters attesting to the unbecoming conduct of the Tenant occurring in 2021 and early in 2022.

Section 20(b) of the tenancy agreement states that growing of any cannabis plant is prohibited within units, on the common grounds, and common areas of the property. Section 15 - Occupants and Guests states that tenants are always responsible to supervise their guests(s) on the residential property. Section 14(c) of the tenancy agreement states that, *"No person shall make, cause or permit to be made any noise or sound, in a private or public place, which disturbs or tends to disturb the quiet, peace, rest, enjoyment, comfort or convenience of other persons."*; and Section 14(d) states that, *"The tenants or the tenant's guest must not disturb, harass, annoy, or otherwise cause nuisance to other occupants of the residential property, the landlord or a neighbour."*

The Landlord submits that the above sections of the tenancy agreement were breached on multiple occasions resulting in the Tenant or his guests significantly interfering with or unreasonably disturbing other occupants and the Landlord. Some of the complaints reported to the Tenant were:

- Noise sounding like banging with a broom; and, slamming of doors, and a lot of traffic (Date of letter sent to Tenant - Feb 17, 2022)
- A woman was observed trying to throw rocks up to the Tenant's balcony; however, she was hitting the balcony of the rental unit below the Tenant's rental unit (Date of letter sent to Tenant - Feb 14 & 16, 2022)
- After an inspection, cannabis plants were found growing in the Tenant's rental unit (Date of letter sent to Tenant - Jan 4, 2021; the Landlord was going to come back Jan 12, 2021 to re-inspect, the Landlord did not provide further testimony whether the problem had been rectified)
- A large set and smaller set of blinds were thrown from the Tenant's balcony onto the lawn below. The Tenant subsequently went down and threw the blinds into a dumpster (Date of letter sent to Tenant - Feb 2, 2021)
- One of Tenant's guests was found sleeping in the laundry room (Date of letter sent to Tenant - Oct 21, 2021)
- High volume of people coming to and from the Tenant's unit unmasked (Date of letter sent to Tenant - Nov 13, 2020)

The Landlord stated the unruly conduct began soon after the tenancy started.

The Tenant testified that on April 17, 2022, he celebrated his first year of being clean and sober. The Tenant uploaded letters into his documentary evidence from people in

his life that are helping him through his personal recovery or who attest to his good character. A friend wrote that on February 15, 2022, and all night, the Tenant stayed at a friend's place all evening, "*So, it's impossible he was making noise.*" One letter, which was from the Tenant himself, was handwritten by a friend but the Tenant had told them what to write as the Tenant has difficulties writing himself.

The Tenant testified that he was told by a building maintenance person, that the building intercom was turned off in his rental unit. The Landlord stated it was because of a phone number change for the Tenant, but the Tenant maintained that his new phone number was working, then the intercom connection was shut off. Consequently, a friend did throw rocks up to his window as she was trying to get his attention.

The Tenant stated he did "drop" blinds from his balcony to the grass, he did not throw them. He stated that he looked down over his balcony before he dropped them down to the ground. He said the blinds were too large to carry down the stairs. He went outside and threw them into the garbage.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47 of the Act is the relevant part of the legislation in this matter. It states:

### ***Landlord's notice: 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,*

...

- (h) *the tenant*
    - (i) *has failed to comply with a material term, and*
    - (ii) *has not corrected the situation within a reasonable time after the landlord gives written notice to do so;*
  - ...
- (2) *A notice under this section must end the tenancy effective on a date that is*
  - (a) *not earlier than one month after the date the notice is received, and*
  - (b) *the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*
- (3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- (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.*
- ...

The Tenant was deemed served with the One Month Notice on February 21, 2022. I find the Landlord's One Month Notice complied with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on February 24, 2022 which was within the 10 days after receiving the One Month Notice.

RTB Policy Guideline #8 - Unconscionable and Material Terms states that a Landlord can end a tenancy agreement if a material term of that agreement has been breached. The Guideline states:

*To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:*

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*

- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

*Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem. (emphasis mine)*

The Landlord wrote the Tenant on January 4, 2021, informing him that he had breached a material term of the tenancy agreement. The breach letter stated that a re-inspection would occur on January 12, 2021 @ 11:00 a.m. The Landlord did not provide further testimony about whether the problem had been corrected or not, accordingly, I find the problem was fixed and do not find cause in this regard to end the tenancy.

The Landlord's testimony is that the Tenant has conducted himself in an unbecoming fashion almost from the beginning of the tenancy. Some of the complaints from other residents are that the Tenant makes a lot of noise which sounds like banging with a broom, slamming of doors, and a lot of traffic in and out of his rental unit. Another complaint was from a resident who witnessed a guest of the Tenant attempting to throw rocks up at the Tenant's window. This person though was hitting the window of the resident below the Tenant and thereby unreasonably disturbing them. In the early part of February 2021, the Tenant threw some blinds from his third-floor apartment down to the grassy area below; however, I find this to be more of a safety issue. The Tenant did go outside to throw the blinds into the garbage. In October 2021, one of the Tenant's guests was found sleeping in the laundry room.

I find that the Tenant and his guests have caused significant interference and unreasonable disturbances to other occupants. These disturbances have also been imposed on the Landlord who are responsible for maintaining the quiet enjoyment and freedom from unreasonable disturbances on other occupants of the residential property. I find the Landlord has proven on a balance of probabilities that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property, and I dismiss the Tenant's application to cancel the Landlord's One Month Notice without leave to re-apply.

As the Tenant was unsuccessful in his application, I must consider if the Landlord is entitled to an Order of Possession. Section 55 of the Act reads as follows:

***Order of possession for the landlord***

- 55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*
- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I previously found that the Landlord's One Month Notice complies with Section 52 of the Act, and I uphold the Landlord's One Month Notice. I grant an Order of Possession to the Landlord pursuant to Section 55(1) which will be effective on June 30, 2022 at 1:00 p.m.

**Conclusion**

The Landlord's One Month Notice is upheld, and I grant an Order of Possession to the Landlord effective on June 30, 2022 at 1:00 p.m. The Landlord must serve this Order on the Tenant as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: June 20, 2022

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Residential Tenancy Branch