



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, OLC, FFT  
                                 OPC

### Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlord. The tenant has applied for an order cancelling a One Month Notice to End Tenancy for Cause; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application. The landlord has applied for an Order of Possession.

The hearing did not conclude on the first or second scheduled dates, and I adjourned the hearing to continue. My Interim Decisions were provided to the parties at the conclusion of each scheduled date.

The tenant and the landlord attended on all scheduled dates, and the landlord was assisted by an agent who also acted as interpreter for the landlord. The tenant and the landlord's agent each gave affirmed testimony, and the parties were given the opportunity to question each other.

The tenant was not certain if all of the landlord's evidence had been provided to the tenant, however I advised the tenant that if any evidence was referred to that the tenant had not received, the tenant should advise me of that. No issues were raised, and all evidence provided by the parties has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established that the 1 Month Notice to End Tenancy for Cause dated February 28, 2022 was issued in accordance with the *Residential Tenancy*

*Act*, specifically with respect to the reasons for issuing it, or should it be cancelled?

- Has the tenant established that the landlord should be ordered to comply with the *Act* or the tenancy agreement?

### Background and Evidence

**The landlord's agent** testified that this fixed-term tenancy began on March 1, 2021 and reverted to a month-to-month tenancy after March 1, 2022 and the tenant still resides in the rental unit. Rent in the amount of \$1,250.00 is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. On February 12, 2021 the landlord collected a security deposit from the tenant in the amount of \$625.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a suite in the lower level of a house, and the landlord lives in the upper levels with 2 teenage children. A copy of the tenancy agreement has been provided by both parties for this hearing.

The landlord's agent further testified that on February 28, 2022 the landlord personally served the tenant with a One Month Notice to End Tenancy for Cause and a copy has been provided by the landlord for this hearing. It is dated February 28, 2022 and contains an effective date of vacancy of April 1, 2022. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Since moving in, the tenant has made constant complaints about the landlord making noise, but it's only daily living sounds. The landlord's children are heavy built which the tenant has complained is very loud. The tenant's suite is on the side of the house. The landlord has received numerous text messages, and the landlord's life is constant in dealing with complaints. The landlord's family walks on egg-shells, being careful about making noise and disturbing the tenant, and the landlord's children have been psychologically disturbed. The landlord's agent was trying to solve the issues between them. The house is a wood frame building, and recordings provided by the tenant are household noise that the tenant is sensitive to. The landlord's daughter is no longer willing to sleep alone and has been sleeping with her mother. The landlord's daughter is afraid of the tenant. The landlord and children try to accommodate the tenant, and follow a number of rules. They feel in their heart that their daily life is limited and can't live in their home, and the landlord has to discipline them, which is damaging.

Previously, a mother and child resided there, who never complained about noise, and the landlord's agent has heard the recordings, but some recordings on the tenant's phone are louder than it actually is. The notice to end the tenancy was issued because life has been difficult for the landlord and the landlord's family. The landlord's children have heard the tenant yelling and the tenant said she was going to call the police.

The landlord's office is above the tenant's bedroom, and the landlord's children are afraid to go to that room or bring computer equipment or use the bathroom on the main floor, for fear of disturbing the tenant.

The landlord's agent has 2 licenses as a property manager and indicated to the tenant that another property might fit the tenant's needs, such as a concrete frame condominium but the tenant refused.

The landlord has provided a copy of a Decision of the director dated March 02, 2022 referring to a hearing held between the parties on February 28, 2022. The tenant had applied for an order cancelling a notice to end the tenancy for landlord's use of property; and order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord. The Decision also states that the Arbitrator could not make a finding that the landlord has intentionally or unreasonably disturbed the tenant, and that the landlord and family have been unable to perform normal tasks such as flushing the toilet, drinking water, or using certain parts of the home, which are not unreasonable. The tenant applied for a clarification, and a copy of that Decision has also been provided for this hearing, which indicates that the clarification process is not an opportunity for the applicant to further argue points that were considered, but rejected by the Arbitrator in the original hearing.

**The tenant** testified that the landlord has accused the tenant of aggressive behaviour, but the tenant has never done anything. There is no evidence of the tenant causing serious amounts of stress or creating an environment of hostility. The tenant is courteous in nature. The landlord and the landlord's agent are making false statements. In every email that the tenant has sent complaining about noise, the tenant mentioned that it was happening after 10:30 p.m., and the tenant rarely hears any heavy footsteps, flushing or anything else during the day.

The tenant also testified that fighting, screaming by the landlord's kids or someone is what the tenant woke up to. The tenant woke up one night in October and texted to see if the landlord was supervising the children. It wasn't to create something like the landlord is trying to show, and the tenant explained her intention to the landlord. The tenant didn't call the police, just asked to be sure everyone was safe.

The tenant has not been told that the text messages have bothered the landlord.

### 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, and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

I have also listened to all of the recordings provided by the tenant, the first several of which sound like a machine running, perhaps a furnace or water pipes or appliance. In some recordings I heard no sounds.

I have also reviewed the text messages provided as evidence for this hearing, and note that the tenant did complain about someone using the restroom at 10:58 p.m. with heavy footsteps. Another complains about a smell.

I have also reviewed the Decision of the director dated March 2, 2022, and I agree that the recordings could be subject to many possible distortions, but I am not satisfied that all of the noises heard in the tenant's recordings are noises caused by the landlord or the landlord's children or dog.

I also note that the evidence provided by the tenant is very similar, and some identical to the evidence that the tenant relied on at the previous hearing. The landlord's agent testified that the landlord's family has been walking on egg-shells, being careful about making noise and disturbing the tenant, and the landlord's children are psychologically disturbed. I also accept that the complaints about noise are normal living sounds.

As previously mentioned in the March 2, 2022 Decision, a tenant is entitled to quiet enjoyment, however a landlord is also entitled to such consideration, which is precisely why a landlord may end a tenancy for:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The tenant testified that she didn't know that the consistent complaints by text messages and other means bothered the landlord. I don't accept that considering that

the One Month Notice to End Tenancy for Cause issued by the landlord on October 9, 2021, which was cancelled by the Arbitrator in the March 2, 2022 Decision due to incorrect service, states that the tenant's complaints were frequent and consistent, including banging on the door, yelling through the walls and sending texts in the middle of the night and threatening to call police, and that the tenant's texts often wake up the landlord or the landlord's agent and the constant complaints are seriously affecting the landlord's daily life and that of the landlord's family.

In the circumstances, and considering the evidence, I find that the landlord has established that the tenant's constant complaints have unreasonably disturbed the landlord's family and has seriously jeopardized the lawful right of the landlord and the landlord's family.

The tenant's application for an order cancelling the One Month Notice to End Tenancy for cause is dismissed. Since the tenancy is ending, I also dismiss the tenant's application for an order that the landlord comply with the *Act* or the tenancy agreement.

I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy contained in the One Month Notice to End Tenancy for Cause has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the landlord in that amount, and I order that the landlord may keep that amount from the security deposit held in trust, or may serve the order to the tenant and file it for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the landlord may keep that amount from the security deposit held in trust 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: November 17, 2022

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Residential Tenancy Branch