



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNC, FFT**

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- cancellation of the landlords’ One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47
- reimbursement of the filing fee pursuant to section 72

Both parties attended the hearing with the landlord represented by an agent SB, along with a witness BM, while the tenant was represented by advocates GP and DW. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the One Month Notice dated October 28, 2022 with an effective date of November 30, 2022. Pursuant to section 89 of the Act the tenant is found to have been served with this notice in accordance with the Act.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

**Issue(s) to be Decided**

1. Is the One Month Notice valid and enforceable against the tenant?
2. Is the tenant entitled to a return of the filing fee?

### Background and Evidence

The tenancy commenced January 3, 2017. Rent is \$495.00 per month due the first day of the month. No security deposit was taken. The tenant still occupies the rental unit.

The landlord testified that the rental property consists of six duplexes. The tenant occupies one side of one of the duplexes. Since 2017 both the previous occupant and the current occupant of the adjacent unit have made multiple noise complaints respecting the tenant. The noise, which generally consists of loud banging, yelling and smashing, starts usually in the evening and continues into the early morning hours. The landlord testified that whenever they received a complaint, they contacted the tenant either in writing or in a face-to-face conversation. The noise would stop for a number of days, and then resume.

The current next-door occupant attended the hearing and provided evidence. She testified that the noise was extreme and usually occurred every third night for the past year that she has occupied the unit next door. She has tried talking to the tenant to no avail. She then resorted to calling the police and has contacted them several times. The police presence was also ineffective. The occupant testified that the noise has caused great stress in her life. Since the One Month Notice dated October 28, 2022 was served the tenant has threatened her. Very recently the tenant entered her residence without her permission. She is afraid and is worried by the escalation in behaviour.

The tenant's advocates are also family members of the tenant. They testified that they were unaware of the issues occurring with the tenant until the tenant received the One Month Notice. They expressed concern that they had not been contacted prior to serving the One Month Notice as they believed they could have intervened and assisted with the situation. They testified that since they have learned about the tenant's behaviour, they have taken many steps to get him community supports. The tenant now has a number of supports in place and they wish the tenancy to continue. They also raised the possibility that the witness is perhaps exaggerating the incidents, not necessarily deliberately.

The landlord testified that the complaints from the previous next-door occupant and the current next-door occupant are very similar, showing a consistency in behaviour. They also stated that they were unaware that the tenant had issues that may require

intervention as the residential property is an independent living unit and tenants are expected to be able to function independently. The landlord stated there is no reason why the landlord would be aware of the tenant's need for community supports, nor are they entitled to the tenant's health information.

The landlord also expressed that should an order of possession be issued; the landlord is prepared to allow the tenant to stay for up to two months to find alternate housing.

### Analysis

RTB Rules of Procedure 6.6 states, "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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy." In this case, the landlord has the burden of proving the validity of the One Month Notice served on the tenant.

The One Month Notice was issued on the ground that the tenant has unreasonably disturbed the landlord or another occupant. Section 28 of the Act states in part:

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;

Further RTB Policy Guideline 6 states in part:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

The landlord has provided evidence, both oral and written of the many documented complaints regarding the noise made by the tenant. I heard from the occupant next door and consider her evidence regarding the stress that the noise is causing for her. I

further take into consideration the hours the noise is occurring. The tenant is making unreasonable noise during the night and into the early morning, and the occupant found it necessary to call the police on several occasions. I also find the complaints credible as there were two separate occupants of the residence next door, and both complained of very similar disturbances. I find that the occupant next door has been unreasonably disturbed by the tenant and that the landlord had cause to issue the One Month Notice.

The tenant's dispute application is dismissed. As the tenant is unsuccessful in his application, he is not entitled to recover the filing fee for the application.

The One Month Notice meets the form and content requirements of section 52 of the Act. Section 55 of the Act requires me to issue an order of possession in favour of the landlord if the One Month Notice meets the form and content requirements of section 52 of the Act and if I dismiss the tenant's application. As section 55(1) of the Act is satisfied, the landlord is entitled to an order of possession. In this case, the landlord has stated that they are prepared to have the order of possession take effect in two months. On that basis I grant an order of possession to the landlord effective on March 30, 2023.

### Conclusion

The landlord is granted an order of possession which will be effective March 30, 2023. The order of possession must be served on the tenant. The order of possession may be filed in 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 *Residential Tenancy Act*.

Dated: January 18, 2023

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Residential Tenancy Branch