



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNC, OLC, FFT**

### **Introduction**

This hearing dealt with an application by the tenants 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
- for an order requiring the landlords to comply with the Act, regulations or tenancy agreement pursuant to section 62 of the Act
- reimbursement of the filing fee pursuant to section 72

Both parties attended the hearing with the landlords BP and RP attending along with witnesses JE, BE, and JN. The tenants TN and MS appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

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

The tenants confirmed receipt of the One Month Notice dated October 28, 2022. Pursuant to section 89 of the Act the tenants are 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.

### **Preliminary Matter**

Rule 2.3 of the RTB Rules of Procedure states that “Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated

claims with or without leave to reapply.” This is also necessary to ensure an efficient dispute resolution process in which hearings are limited to one hour.

The tenants applied for an order compelling the landlords to comply with the Act, regulations and the tenancy agreement. This issue is not related to the dispute of the One Month Notice and is therefore severed pursuant to Rule 2.3 of the RTB Rules of Procedure. The tenants have leave to reapply on this issue. This decision does not extend any time limits set out in the Act.

#### Issue(s) to be Decided

1. Is the One Month Notice valid and enforceable against the tenants? If so, are the landlords entitled to an order of possession?
2. Are the tenants entitled to recover the filing fee for this application?

#### Background and Evidence

The tenancy commenced April 1, 2017. Rent is \$938.88 per month due on the first day of the month. The landlords currently hold a security deposit of \$400.00 and a pet deposit of \$150.00 in trust. The tenants still occupy the rental unit.

The landlords served the tenants the One Month Notice for significantly interfering with or unreasonably disturbing another occupant or the landlord of the residential property. The landlord alleged that the tenants have unreasonably disturbed other tenants of the rental property over a period of approximately 18 months, which resulted in the One Month Notice being issued.

The landlords stated that the rental property is a single detached home with an upstairs and a downstairs rental suite. In the past 18 months there have been three separate occupants, all families, in the upstairs unit. Over the course of 18 months, the landlords allege that the tenants have made several formal noise complaints against all three separate family occupants, including complaints in July, 2021 October 2021 and December 2021. The landlords state that they responded to every separate noise complaint to try to resolve the issue, including issuing noise warnings to the upstairs occupants. They also allege that the tenants banged on the walls and ceiling of the rental unit and yelling, disturbing the upstairs occupants. The also allege that one of the downstairs tenants made obscene gestures towards the upstairs occupants on several occasions. The landlords verbally laid out a timeline with dates on which the tenants complained, and dates that they responded to the complaints, both to the tenants and

the other occupants. This timeline included a formal warning letter sent to the tenants in December 2021.

Two of the previous occupants of the upstairs rental unit testified in the hearing. They stated that there was noise, they were families with young children, and the noise was part of everyday life. They did occasionally have children crying, dropping things on the floor, and visitors, which created noise. They state that most of these activities occurred during reasonable hours, before 11:00 pm, and were the result of normal family activity. Both previous occupants testified to feeling like they had to walk on eggshells, and that they and their children did not feel like they could carry out normal family activities for fear of disturbing the tenants.

The two occupants who testified in the hearing have moved out. They both stated they moved out because of the actions of the tenants, who made them feel uncomfortable in their home. Both previous occupants provided letters in evidence describing their negative interactions with the tenants, including the tenants banging on the walls, yelling, and making obscene gestures directed at the occupants. A third occupant who currently lives in the upstairs rental unit also provided a letter in evidence describing their experiences with the tenants, and stated they also received formal noise complaints, as well as banging on the walls and yelling by the tenants.

The tenants disputed making obscene gestures towards the occupants. They did not deny making complaints through the landlord, but felt that they were justified, as the upstairs occupants were very loud. They stated that the noise occurred at all hours. They wrote to the landlord with complaints and provided decibel readings to the landlords. They also did not deny banging on the walls but stated that they would only do that if the noise exceeded 20 minutes. The tenants stated that the upstairs occupants made a conscious decision to move into the rental property with their children knowing that the tenants lived downstairs, and therefore should have changed their lifestyle knowing they were moving into a shared rental unit. The tenants also alleged that the dates and times of the occupants' complaints were vague.

### Analysis

The landlords issued the One Month Notice under section 47 of the Act and specified the reason as follows:

47(1) (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,

The Act requires the disturbance of other occupants of the residential property to be significant. In this case, the tenants' pattern of conduct occurred over a period of 18 months and involved three separate families who occupied the upstairs suite. Two families moved out as a result of the tenants' constant complaints, obscene gestures, and banging on the walls of the rental unit.

I place significant weight on the fact that the landlord has established a pattern of conduct which shows that this was not merely a dispute between neighbours. The tenants' behaviour has been ongoing and has been directed toward three separate occupant families of the upstairs suite. While the tenants did make complaints through the appropriate channel, the landlord, the complaints were ongoing and were significant in the effect that they had on all three family occupants. They continued to the point that the other occupants and their children were afraid to make any noise, for fear of reprisal. Additionally, some of the tenants' behaviours that the occupants complained of were not within parameters of appropriate behaviour in response to noise, such as banging on the walls, yelling, and obscene gestures. While the tenants dispute that the gestures were meant to be obscene, I find that given the context in which they occurred, that they were a communication reasonably interpreted as threatening, and at the very least were inappropriate responses to concerns about noise.

This is not the case of a minor dispute between residents of a rental property. The behaviour described of the tenants was constant, ongoing, and directed at anyone who occupied the upstairs suite. I find further that the landlords were responsive to the tenants' complaints and took appropriate action to resolve the issues between the tenants and all three families who successively occupied the upstairs suite. The landlords listened to the tenants and issued noise warnings to the upstairs occupants based on the tenants' complaints. I also find that both the landlord and the other occupants provided detailed evidence of the tenants' objectionable behaviour, including dates and often specific times that the behaviour occurred. The landlords provided extensive documentation in evidence of the tenants' complaints, their responses to the complaints, and the dates of occurrence of the tenants' behaviour.

The nature of shared rental spaces requires a mutual respect and understanding of the realities that accompany city living, which include but is not limited to reasonable noise levels and occasional unreasonable disturbances. I find that the tenants were

complaining of reasonable noise that occurs between shared spaces. The number of complaints were excessive, and the tenants' reaction to noise was inappropriate on enough occasions that establish a pattern of harassment.

Therefore, I find that the One Month Notice complies with the form and content requirements of section 52 of the Act and the landlords have established the grounds for the One Month Notice.

I dismiss the tenants' application. As the tenants are unsuccessful in their application, they are not entitled to recover their filing fee for the application.

The landlords are entitled to an order of possession pursuant to section 55(1.1) of the Act.

### Conclusion

The landlords are granted an order of possession which will be effective two days after it is served on the tenants. The order of possession must be served on the tenants. 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 4, 2023

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Residential Tenancy Branch