



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

CNC, OLC, LRE

### Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which they applied to cancel a One Month Notice to End Tenancy for Cause, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, and for an Order suspending or setting conditions on the Landlord's right to enter the unit.

The Tenant stated that the Dispute Resolution Package was sent to the Landlord, via registered mail, although she cannot recall the date of service. The Landlord acknowledged receipt of these documents.

On August 07, 2022 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that she does not know if this evidence was served to the Landlord. The Agent for the Landlord stated that no evidence was received from the Tenant for these proceedings. I find that the Tenant has failed to establish service of this evidence package, and it was not accepted as evidence for these proceedings.

On December 12, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on December 12, 2022. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that

they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

### Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Is there a need to issue an Order requiring the Landlord to comply with the *Act* and/or tenancy agreement?

Is there a need to suspend or set conditions on the Landlord's right to enter the unit?

### Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began in 2017;
- rent is due by the first day of each month;
- a One Month Notice to End Tenancy for Cause was served to the Tenant by placing it in her mailbox;
- the One Month Notice to End Tenancy for Cause declared that the rental unit must be vacated by September 07, 2022;
- the One Month Notice to End Tenancy for Cause declares that the tenancy is ending because the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord and the tenant or person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The Agent for the Landlord stated that the Tenant has breached another occupant's right to quiet enjoyment of the rental unit by playing loud music. This submission is

based on two emails written by the same individual, dated June 24, 2022 and June 29, 2022, in which the author reports being disturbed by the music “sometimes after 1230 p.m.” The author declares that she has discussed the noise with the Tenant on several occasions, who does “not care”.

The Tenant stated that the person who wrote the emails of June 24, 2022 and June 29, 2022 never told her the music was disturbing. She stated that she learned about the neighbor’s concern about the music when she received a letter from the Agent for the Landlord, dated June 28, 2022. The Tenant stated that her music has not disturbed others since she received the letter of June 28, 2022. The Agent for the Landlord acknowledged that he has not received any complaints about the Tenant’s music since she was served with the letter of June 28, 2022.

The Agent for the Landlord stated that the Tenant has breached a different occupant’s right to quiet enjoyment of the rental unit by making excessive noise while erecting a tent around midnight at July 30, 2022. This submission is based on an email written by a neighbour, who reports that the Tenant is using power tools and is “making a heck of a disruption” by erecting a tent.

The Tenant stated that she was home when a friend was erecting a tent on her property around midnight on July 30, 2022, but she did not hear him making noise. The Agent for the Landlord stated that he does not know how the Tenant could not have heard it, as the occupant who did hear it lives across the street from the Tenant.

The Agent for the Landlord stated that the Landlord served the One Month Notice to End Tenancy for Cause, in part, because of an on-going issue with the carport. In support of this reason the Agent for the Landlord stated that:

- the Tenant was told to clean her carport on May 05, 2022;
- the Tenant was told to clean her carport on June 21, 2022;
- two photographs dated April 25, 2022 represent the condition of the carpet prior to the Tenant being asked to clean it on May 05, 2022;
- the Tenant made some effort to clean the carport after June 21, 2022, but it was not sufficient;
- the photograph dated June 27, 2022 demonstrates the condition of the carport on that date;
- in a letter sent to all tenants in 2018, the Tenant was reminded of her obligation to keep the exterior of her unit tidy and that the carport cannot be used for storage;

- the manner in which the Tenant is storing property in the carport and on her site is dangerous, as it inhibits access and egress to the site; and
- the manner in which the Tenant is storing property attracts rodents and other animals;
- if the Tenant is storing flammable materials, it may pose a safety risk; and
- a neighbour has complained about items being stored in the carport.

The Tenant stated that the aforementioned photographs fairly represent the condition of her carport on the dates they were taken. She stated that:

- she cleaned the carport after she was asked to do so on May 05, 2022 and June 21, 2022;
- she does not have a vehicle and sometimes items accumulate in her carport until she can arrange to have them removed;
- she is not storing any flammable products; and
- she is not storing property in a manner that inhibits access or egress to the property.

The Tenant stated that the photograph taken on April 25, 2022 at 10:38 is not her carport. The Agent for the Landlord stated that he is not certain if that photograph is of the Tenant's carport. As such, I have not considered that photograph in this adjudication.

The Tenant stated that she applied for an Order requiring the Landlord to comply with the tenancy agreement and/or the *Act* because she feels the Landlord is harassing her by repeatedly serving her with notices to end her tenancy.

The Landlord and the Tenant agree that the Landlord has previously served the Tenant with notices to end tenancy, which were the subject of a previous Residential Tenancy Branch dispute resolution proceeding. These file numbers appear on the first page of this decision. With the consent of both parties, I viewed those decisions prior to rendering this decision.

In the decision ending with the numbers 7182, dated January 18, 2022, a Residential Tenancy Branch Arbitrator determined that the Landlord did not have sufficient grounds to end the tenancy on the basis of a One Month Notice to End Tenancy for Cause that was served to the Tenant on August 23, 2021.

In the decision ending with the numbers 4497, which was crossed with the decision

ending with the numbers 5127, dated November 29, 2019, a Residential Tenancy Branch Arbitrator determined that the Landlord did not have sufficient grounds to end the tenancy on the basis of a One Month Notice to End Tenancy for Cause that was served to the Tenant on September 09, 2019.

When asked why the Tenant wants an Order suspending or setting conditions on the Landlord's right to enter the rental unit, the Tenant stated that she simply wants the Landlord to provide her with proper notice before entering the unit. The Agent for the Landlord stated that the Landlord always has, and will continue to, comply with the *Act* whenever the Landlord wishes to enter the unit.

### Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant have a tenancy agreement which requires rent to be paid by the first day of each month.

Section 47(1) of the *Residential Tenancy Act (Act)* permits a landlord to end a tenancy by giving notice to end the tenancy if:

- a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b) the tenant is repeatedly late paying rent;
- (c) there are an unreasonable number of occupants in a rental unit;
- (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,
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - (iii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
  - (i) has caused or is likely to cause damage to the landlord's property,
  - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
  - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;
- (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;
- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [*assignment and subletting*];
- (j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;
- (k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
- (l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:
  - (i) the date the tenant receives the order;
  - (ii) the date specified in the order for the tenant to comply with the order.

On the basis of the undisputed evidence, I find that the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause, dated August 03, 2022, which informed the Tenant of the Landlord's intent to end the tenancy pursuant to sections 47(1)(d)(ii) and 47(1)(e)(ii) of the *Act*. The Landlord only needs to establish grounds to end the tenancy for one of those reasons.

The Landlord submitted no evidence to establish that the Tenant and/or a guest of the Tenant has engaged in illegal activity. I therefore find that the Landlord has failed to establish grounds to end the tenancy pursuant to section 47(1)(e)(ii) of the *Act*.

I find that the Landlord has failed to establish grounds to end this tenancy pursuant to section 47(1)(d)(ii) of the *Act*.

While I accept the evidence that shows a neighbour was disturbed by the Tenant's music, I find there is insufficient evidence to determine precisely when those disturbances occurred. As the emails regarding the disturbances were written on June 24, 2022 and June 29, 2022, I find it reasonable to conclude that the disturbances

occurred sometime in June of 2022. As the issue with music appears to be relatively isolated incidents that did not continue after the Tenant was informed that the music disturbed others, I cannot conclude that the issue with the music can be considered grounds to end the tenancy because the Tenant “seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant”. The Tenant should be aware, however, if this type of disturbances was to re-occur, the Landlord MAY have grounds to end the tenancy pursuant to section 49(1)(d)(i) of the Act. I note that in this One Month Notice to End Tenancy for Cause the Landlord has not applied to end the tenancy pursuant to section 49(1)(d)(i) of the Act.

While I accept that a neighbour reported being disturbed by a tent being erected in the Tenant’s carport around midnight at July 30, 2022, I cannot conclude that the issue with the music can be considered grounds to end the tenancy because the Tenant “seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant”. In reaching this conclusion I was influenced, to some degree, by the Tenant’s testimony that she did not hear the disruption caused by the tent being erected. While I accept that erecting a tent can be somewhat loud, particularly if the person erecting the tent is thoughtlessly throwing poles, I am aware that it does not take long to erect a tent and the noise, therefore, cannot be considered significant enough to end a tenancy. The Tenant should be aware, however, if this type of disturbance was to re-occur, the Landlord MAY have grounds to end the tenancy pursuant to section 49(1)(d)(i) of the Act.

Even if accepted that the Tenant was storing items in the carport in an unsightly manner, I cannot conclude that the Landlord has grounds to end this tenancy pursuant to section 47(1)(d)(ii) of the Act. In reaching this conclusion, I was heavily influenced by the absence of any evidence to corroborate the Agent for the Landlord’s testimony items were being stored in a manner that inhibits access and egress to the site; in a manner that attracts rodents and other animals; or that she is storing flammable materials in a manner that poses a safety risk. In the absence of such evidence, I cannot conclude that the Tenant has “seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant”.

In adjudicating this matter, I have not determined whether the manner in which the Tenant is maintaining her carport/yard is a breach of a material term of the tenancy agreement, as the Landlord has not applied to end the tenancy on the basis of a breach of a material term of the tenancy.

As the Landlord has failed to establish grounds to end this tenancy pursuant to sections 47(1)(d)(ii) of the Act and 47(1)(e)(ii) of the Act, I grant the Tenant's application to cancel the One Month Notice to End Tenancy for Cause.

While I accept that the Landlord has now served the Tenant with three One Month Notices to End Tenancy for Cause, all of which have been set aside, I cannot conclude that the Landlord is breaching the Tenant's right to quiet enjoyment of the rental unit by serving those Notices. I therefore decline to issue an Order preventing the Landlord from serving a One Month Notice to End Tenancy for Cause in the future.

In the event the Landlord intends to serve the Tenant with another One Month Notice to End Tenancy for Cause, however, the Landlord should make every effort to ensure they are able to establish grounds to end the tenancy. In the event the Landlord continues to serve the Tenant with notices to end the tenancy that are not upheld by the Residential Tenancy Branch, it is entirely possible that the Tenant will be entitled to compensation for loss of quiet enjoyment.

The Landlord is hereby reminded of the obligation to comply with section 29(1) of the Act whenever entry to the rental unit is required.

For the benefit of both parties, section 29(1) of the Act reads:

**29 (1)** *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*
  - (i) the purpose for entering, which must be reasonable;*
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;*
- (d) the landlord has an order of the director authorizing the entry;*
- (e) the tenant has abandoned the rental unit;*
- (f) an emergency exists and the entry is necessary to protect life or property.*

## Conclusion

The One Month Notice to End Tenancy for Cause is set aside and has no force or



effect. This tenancy shall continue until it is ended in accordance with the *Act*.

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: January 06, 2022

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Residential Tenancy Branch