



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding YWCA METRO VANCOUVER
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code CNC

Introduction

1. Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy.
2. The tenant applied for cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47.
3. The Residential Tenancy Branch (RTB) issued a decision for this matter on April 27, 2021. The British Columbia Supreme Court issued a decision on December 09, 2021 (the BCSC decision), setting aside the April 27, 2021 RTB decision and ordering a new hearing before a different arbitrator.
4. After the BCSC decision this matter was heard on four dates and interim decisions were issued on May 17, October 05 and December 21, 2022 (the interim decisions). This decision should be read in conjunction with the interim decisions.
5. Both parties attended the hearing on January 10, 2023. Tenant JC (the tenant), witnesses for the tenant AL and SW and counsel AK attended for the applicant. The respondent was represented by agent LR (the landlord) and counsel HD. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.
6. At the outset of the hearings all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.
7. Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision

or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00.”

8. I note that section 55 (1) of the Act requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.
9. On September 29, 2022 both parties confirmed they received the notices of hearing and all the evidence and that they had enough time to review these documents. Based on the undisputed testimony, I find that each party was served with the notices of hearing and evidence in accordance with section 89 of the Act.

Preliminary Issue – evidence not accepted

10. The tenant submitted a transcript of a conversation between the tenant and other tenants (pages 19-31 of PDF file ‘Tenants_Evidence_part 2’). The tenant affirmed the other tenants did not know their conversation was recorded. Counsel AK did not explain how this transcript is relevant to this matter. Counsel HD requested this evidence be excluded, as the other tenants did not know their conversation was recorded.
11. Considering the tenants did not know they were recorded, and that counsel AK did not explain how the transcripts are relevant to this matter, I excluded the transcripts.

Preliminary Issue – time after service of the Notice

12. The Notice is dated January 21, 2021. The parties presented their evidence for this matter in hearings that happened in September and December 2022 and January 2023.
13. In *Senft v Society for Christian Care of the Elderly*, 2022 BCSC 744 (*Senft v. Society*), the BCSC stated:

[39] The arbitrator failed to consider post-Notice conduct of the petitioner. The arbitrator found that the evidence of the current state of the rental unit, and its cleanliness after the petitioner’s retention of cleaners, was irrelevant. However, as this Court found in *McLintock* at paras. 58-59, post-notice conduct is relevant

when deciding whether an end to tenancy was justified or necessary in the context of the protective purposes of the RTA.

14. I explained to the parties before they presented their evidence that I will consider the conduct of the tenant after the Notice was issued.

Issues to be Decided

15. Is the tenant entitled to cancellation of the Notice?
16. If the tenant's application is dismissed, is the landlord entitled to an order of possession?

Background and Evidence

17. While I have turned my mind to the evidence and testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.
18. I note that after the BCSC decision the three hearings lasted a total of 534 minutes, the landlord's evidence contains 219 pages and the tenant's response evidence contains 161 pages.
19. Both parties agreed the tenancy started on January 02, 2020. Monthly rent on September 29, 2022 was \$985.00, due on the first day of the month. At the outset of the tenancy the landlord collected and currently holds in trust a security deposit in the amount of \$691.00.
20. The parties submitted the tenancy agreement into evidence. It states the noise policy for quiet hours:
- 46.1: In order to promote the safety, welfare, enjoyment, and comfort, of other occupants, guests and Tenants of the Premises, the Tenant, occupant and guest shall not disturb, harass, or annoy other occupants, guests, or Tenants of the Property or neighbours or employees of the Landlord. In addition, noise of- any kind, which in the reasonable opinion of the Landlord may be calculated to disturb the comfort of any other occupant,

guest or Tenant of the Property shall not be made by a Tenant, occupant, or guest, nor shall any noise whatsoever, including the playing of any musical instrument be repeated or persisted after a request to discontinue such noise has been made by the Landlord. **The Tenant, occupant, or Tenant's guest shall not cause or allow loud conversation, music, television, radio, stereo system, or an irritating noise to disturb the peaceful enjoyment of other Tenants, occupants, or guests at any time, and in particular between the hours of 10:00 p.m. and 9:00 a.m. The Landlord may end the tenancy in accordance with the Act as one of its remedies.**

(emphasis added)

21. The tenant lives in the wood frame rental building with her son RI. The tenant shares RI's custody with his father since 2018.
22. The letter signed by RI's physician on July 14, 2020 states: "This letter is to confirm that RI has Autism spectrum and has frequent episodes of impulsiveness that is out of mom's control to keep him quiet. RI lives with his mom."
23. Both parties agreed the tenant received the Notice on January 22, 2021. The tenant submitted this application on January 29, 2021 and continues to occupy the rental unit.
24. The landlord submitted the Notice into evidence. It is dated January 21, 2021 and the effective date is February 28, 2021. The reasons to end the tenancy are:

The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

25. The details of the cause are:

Ongoing noise from tenant's unit has significantly impacted her neighbours right to quiet enjoyment of their units. Complaints have been received From three neighbouring units, and one of these neighbours has submitted medical documentation about the negative impact the ongoing noise has [not legible] her health.

Tenant has received six letters regarding breaches of section 46.1 of their Tenancy Agreement regarding disruptive noise and quiet hours: April 24, 2020; July 8, 2020; July 23, 2020; August 12, 2020; September 18, 2020; December 17, 2020 and January 15, 2021. These repeated breaches of a material term of

their Tenancy Agreement have not been corrected within a reasonable amount of time after being given written notice to do so.

The tenant has a child whose disabilities the tenant has identified as relevant to many, but not all, of the noise complaints submitted by neighbours. The [landlord] has sought to address the concerns of the neighbours while accommodating the tenant's child's disability by offering a transfer to two different similarly sized units on the ground floor at other buildings, where the layout of the unit would help reduce noise transference to neighbours. One of these was 5.6 kms away from her current unit. The tenant has rejected these offers of alternative accommodations.

26. The landlord served a letter dated January 21, 2021 with the Notice, explaining the reasons of the Notice and the landlord's effort to amicably solve the situation:

Since your initial move-in on January 2, 2020, we have received, and notified you about, six breaches of section 46.1 Complaints and Conduct of your Tenancy Agreement, the details of which are in the breach letters that were previously sent to you.

While investigating these, you let us know that the noise issue was a result of your child's disability and that you were struggling to provide him with the additional support he requires due to the loss of his support services during to the pandemic.

In an effort to try to resolve the impact of the noise on your neighbours and accommodate your son's disability, we offered you unit [the Coquitlam unit] as this unit was on the ground floor, and has a layout that would enable your son to have a bedroom that was not adjacent to any other units' bedrooms. In an email responding to this letter, you let us know that you were not interested in accepting this alternative accommodation as the distance would be problematic for your current support system and you were concerned that the move would create unneeded stress on your family.

On August 17th, in response to your request for extra soundproofing I let you know that we would not be able to provide additional soundproofing to your unit as it was already heavily insulated as it is due to the fact we share the building with a fire hall. I then provided some recommendations of alternative sound proofing you might be able to do yourself in order to mitigate noise transfer. **I also reiterated our original offer of [the Coquitlam unit].**

On January 15, 2021, I sent you a letter letting you know that we had received another complaint about excessive noise from your unit. In this letter, I let you know that this was the sixth complaint we had received about excessive noise from your unit, and that we had received medical documentation from a complainant that the excessive noise from your unit was causing them some health issues. As this was the sixth complaint we had received on this issue, I let you know that I would need to terminate your tenancy. **In order to find a**

balance in accommodating both your family's medically documented situation with the medically documented situation we had been made aware of from a complainant, we made the decision to offer another unit – the Vancouver unit] I outlined our rationale for why this unit would be more suitable for your family and how it would better meet the needs you had previously expressed to us when we had originally offered you [the Coquitlam rental unit]. I then let you know that I would be sending your termination documents for [the rental unit] if I didn't hear from you by end of day Monday, January 18th

On January 17th, you sent me an email addressing some inconsistencies in the details I had mentioned in the letter I had sent you on the 15th (which I then acknowledged in a follow-up email), and provided us with some additional information surrounding the noise complaints noted in the letter. On January 19th, you then sent me two separate emails: one which outlined why you believed the complaints made against you might be frivolous, and another which was responding to my last email in our [redacted for privacy] January 15 Letter email chain. This second email also made a complaint about some noise transfer coming from a unit below you. **In order to address both items, I responded with a detailed email outlining what we needed you to do before we could address a noise concern with a tenant below you, and further explaining why we made the decision to offer you unit [the Vancouver Unit]. At the end of this email, I let you know that the YWCA would be able to contribute \$450 towards your moving expenses and extended the deadline to explicitly accept unit [The Vancouver unit] by 12pm on Wednesday, January 20th** I also let you know that I was no longer able to provide you with any additional extensions to this offer and that, if I didn't receive explicit acceptance of this accommodation, we would be moving forward with your eviction.

As of the writing of this letter, we have not received a response from you and we are assuming that you are declining our offer of \$450 toward your moving expenses, and unit [the Vancouver unit].

Please be advised that we are providing you with a One Month Notice of Termination for Cause for the following breaches:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - o Per breaches to section 46.1 Complaints and Conduct of your tenancy agreement.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after receiving written notice to do so.
 - o Per breaches to section 46.1 Complaints and Conduct of your tenancy agreement.

Included with this letter you will find the following:

- RTB-33 One Month Notice to End Tenancy for Cause

(emphasis added)

27. The landlord testified that since the tenant and RI moved to the rental unit several tenants submitted noise complaints stating that frequent loud noise originates from the tenant's rental unit.
28. Both parties confirmed they have received the emails, letters and text messages submitted into evidence when they were issued.
29. Tenant AW (unit 603, located on the same floor as the tenant's unit), submitted a noise complaint against the tenant on April 19, 2020:

Please describe your complaint, providing as many details as possible including when, where, who and how: There is a boy who loves next to me and while I appreciate that he is autistic, I don't think it's appropriate that I am woken up at 1am or can't get to sleep at 9pm to screams of "FUCK YOU BITCH" and slamming things around. It's excessive and multiple times a week at times of the day where children and myself are sleeping. I share a wall with the boy and it's extremely disturbing his violent fits.
30. The tenant emailed the landlord on April 24, 2020 stating that RI lost all his support because of the pandemic's lockdown and that she is trying to mitigate the noise by enforcing an earlier bed time for RI.
31. The tenant stated that prior to the pandemic RI had one to one coaching, a special education assistant, and memberships to the cultural and entertainment centers. The tenant said that once RI lost access to all his support services he became angry, aggressive and sometimes yelled.
32. The tenant affirmed that RI's physician prescribed melatonin in the summer of 2020, RI started going to bed around 10:00 PM, stopped yelling and stomping.
33. The landlord submitted a second noise complaint against the tenant submitted by AW on May 11, 2020: "It is so loud that it wakes me up at night".
34. The landlord submitted a complaint from tenant ET (unit 502), located immediately below the tenant's unit, dated June 02, 2020:

I already heard a lot of noise from [the rental unit], I did not say anything. My son asking me that he can't sleep because of the noise. I explained to him that the boy upstairs is a special needs, I told [the tenant] that my son have a mild ADHD regardless my son have a routine, his in bed at 9 because there is a school next day. [...] I told her [the tenant] I don't mind if it's day time cause were not home, but if its night time please less noise. [...] April 1 I woke up at 12:30 am that night because someone talking and yelling too loud outside the balcony above us until 1:30 am they yelled.

35. The tenant submitted a noise complaint on June 18, 2020 against tenant AW.

36. Tenant AW submitted a complaint on July 01, 2020: "this is the second night in a row that the kid in [the rental unit] has woken up at 2am and 3am throwing a fit stomping and yelling".

37. The landlord served a warning letter to the tenant on July 08, 2020:

Breach of tenancy agreement – noise violations & balcony overflow

We have received several complaints of noise coming from your unit. The following reports have been received:

- April 1st 12:30 AM to 1:30 AM Yelling from balcony of your unit
- April 21st 11:00 PM Repetitive impact noise against floor during quiet hours
- April 22nd 10:30PM Repetitive impact noise against floor during quiet hours
- May 20th Yelling, banging on wall, and excessive dog barking
- May 26th 11:30 PM Impact noise against wall during quiet hours
- June 2nd after 10:00 PM Noise on balcony, and impact/ scratching against the floor, during quiet hours.

As you have already received a warning on April 24th, 2020, please be advised that continuing this conduct of this type places your tenancy in jeopardy, and may result in eviction.

38. The tenant emailed the landlord on July 24, 2020:

You may have read in the news how covid 19 has negatively effected special needs families. During covid 19, my son lost his professional supports. His special education assistant and adapted sports coach did not continue to support him during the pandemic. My son was not able to have sessions with his psychologist, sound therapist or an occupational therapist. His teacher was not able to meet us in person. classes and social gatherings my son attended were cancelled. Public and private facilities we normally visit frequently, were shut down. In addition, the move was extremely stressful for RI and he is being psychologically abused by a family member. I had to call the

police for support and a social worker interviewed my son.

[...]

My son has had short meltdowns during quiet hours. I'm not aware of him banging on the wall. However, he has slammed his bedroom door no more than twice during a meltdown. I've placed felt on the frame of the door to prevent future noise disturbances to our next door neighbour and downstairs neighbours.

[...]

The April 1st complaint isn't accurate. My son did not yell from the balcony for 1 hour. I would have been able to get him inside after he yelled 1 sentence. Is it possible the neighbour heard strangers yelling from the alley or was mistaken on duration?

[...]

The modifications I've made will address the main noise concerns of door slamming and foot tapping. I hope our neighbours won't be disturbed again.

39. The tenant emailed the landlord on July 27, 2020:

My concerns is, my son's meltdowns were in part caused by losing his support workers due to covid 19. They travel to our home. Both support workers have told me they only want clients who live nearby. By moving we would lose my son's support workers. As well, I do not have a car to transport my son to his therapists who work in Vancouver. I am a member of EVO, a Vancouver car share. Support workers and therapists are starting to work again after summer break. I'd like to stabilize my son's life not destabilize it.

Moving in itself, is hugely stressful for my son. In all probability, RI's meltdown would increase in duration and frequency, if we were to move again. Moving isn't a solution.

40. The landlord submitted similar complaints from AW and ET on August 09, 2020 reporting loud noise emanating from the rental unit after 10:00 pm and a warning to the tenant on August 12, 2020.

41. On August 13, 2020 the tenant explained to the landlord that her son stomped and that her neighbours are sensitive to noise:

I'm concerned, some of the noise complained about is normal living noise or accidental noise very short in duration. The soundproofing is not good in this building. I can hear my neighbour below me, walking and talking. I'm aware, there have been many noise complaints directed at other tenants, in this building. I've with AW. AW confirmed the noise she heard was short In duration and she, in fact, hesitated to make the complaints. She said she has been under a lot of

stress. She mentioned ET several times. The two neighbours are chatting together about us, confirmed by AW. I'm concerned about coercive bullying. It is apparent, there is an intentional over-reporting of noise complaints that qualify under "normal, everyday noise", with the intention of forcing us from our home. Perhaps because of past meltdown noise, the tolerance for noise is extremely low and the justification for complaints feels high. With all of this said, I'm highly compassionate towards others and this letter details more steps I'm taking to mitigate noise. There needs to be fairness in any noise complaints I receive.

[...]

My son did stomp once, for 1-2 minutes. I hoped that this would not result in a noise complaint. I feel so anxious any noise and I am doing my best.

The furniture being dragged at 11pm was my son repositioning the coffee table. I am asked to stop moving coffee table and he did. The noise lasted 8-10 seconds. Again, I would appreciate if the YWCA would let me know if there is a policy for duration of noise, for it to be considered a noise complaint. How does the process for formal complaints work? It's extremely stressful to receive noise complaints and it seems unfair to receive his latest letter, given the nature of some of the recent noise. My life already includes more stress than the average parent deals with because of my son's invisible disabilities.

My son had a huge meltdown on August 12th. I've done further soundproofing and I'm taking additional steps to prevent meltdowns during quiet hours. I did let [the landlord] know, my son has noisy meltdowns, in my intake interview for [the rental unit]. My family was welcomed into the building.

[...]

It seems my neighbours have hypersensitivity to noise. AW has said a noise can wake her up and she can't fall back to sleep for up to an hour. She has sleep anxiety. She has a history of yelling at neighbours over noise during daytime hours. ET has said she was the first to move into this building and loved the absolute peace and quiet with no neighbours.

[...]

In thinking about further solutions on my end, I had an idea for interlocking floor mats for the unit and wall padding for 1 wall of my son's room. Would YWCA be able to cover the cost for these items? I found affordable options.

42. The tenant stated she could not move furniture in August 2020 because of a motor vehicle accident and currently she can only move furniture that weighs up to 20 pounds.
43. The landlord informed the tenant on August 17, 2020 that the landlord is not able to provide additional soundproofing to the new rental building and that the landlord does not consider the noise complaints submitted by several other tenants against the tenant to be frivolous.

44. On August 14, 2020 the tenant informed the landlord that tenant ET refused to communicate with the tenant regarding the noise complaints. The tenant also stated: "Beyond the meltdowns, the noise complaints are noises from regular living."

45. The tenant emailed the landlord on August 26, 2020:

I have had countless discussions with RI about quiet time hours, wanting to get the message across. Today, I had a fresh idea. I've shown him a picture of a suite in Vancouver, we could move to if we are evicted. It's a bachelor suite, RI would not have his own bedroom. Seeing the picture really impacted RI. I believe he understands now. He's come up with his own long term solution so he is quiet at night. I have to work collaboratively with him for positive change to occur. I'm feeling very uplifted after our discussion today.

46. On September 07, 2020 ET emailed the landlord:

August 25, at 11pm: We are already sleeping and I work up of this noise upstairs, they are running and stomping feet.

September 6: [...] I'm still trying to go to sleep but I cant when I check the time it's past 10pm, then they start the noise from the living room it's like a rocking chair, we can't rest (sleep).

47. On September 16, 2020 AW emailed the landlord: "The past week, the noise from [the rental unit] has escalated again. The evening noise of stomping and banging persists past 11pm".

48. The landlord submitted a letter issued by ET's physician on September 24, 2020:

ET was seen in my office on Thursday September 24, 2020. This letter is to confirm hat she has been suffering from several months of sleep disturbance, which is now negatively affecting her health.

49. The landlord served a warning letter to the tenant on September 18, 2020:

We have received the following additional complaints of noise emanating from your unit during the building's quiet hours:

August 8, 2020: 11:15PM Laundry machine noise

August 9, 2020: 12:30AM Laundry machine noise

August 9, 2020: 2:00AM-3:00AM Dog barking

August 9, 2020: 3:00AM Laundry machine noise

September 15th, 2020: 10:00PM Laundry machine noise

Please note that the building quiet hours are between 10:00 p.m. and 9:00 a.m., as described in your signed tenancy agreement:

[...]

Please note that further breaches of the tenancy agreement may result in action by property manager, including eviction.

50. The tenant emailed the landlord on September 18, 2020:

On August 12th, 2020 I received breach letter for noise on August 06, 07, 08 and 09. On August 13th, 2020 I responded. However, on September 18th, 2020 I was sent another breach letter for these same dates. It was identified the banging on August 08 and August 09 was actually laundry machine noise. Since August 09, 2020 I have not done laundry after 10pm.

[...]

On August 09, 2020 my dog, Rocco, did not bark from 2am-3am. I would never allow that, doing so would be completely out of character.

51. The tenant purchased a soundbar that helps to reduce turbulent noise and does not cause vibration.

52. On November 04 2020 the tenant emailed the landlord and denied that she is responsible for noise complaints, informed that she purchased two air purifiers in order to keep her windows closed and rug pads to not disturb the other tenants. The tenant also installed pool noodles around RI's door to reduce noise emanating from the rental unit.

53. The landlord submitted a letter addressed to all the tenants on November 26, 2020 further explaining the quiet hours policy:

This is a wood frame building for families with children. As such, there will be normal household noise. While we do have "quiet hours" from 10 p.m. to 9 a.m., this means things like no playing music or television at loud volumes, no loud parties at that time, no vacuuming and no running the washer/dryer during this time.

During quiet hours, people are still allowed to conduct their normal lives-and there will still be the sounds such as people walking in their units, cooking, talking and watching tv at reasonable levels. There will be some sound transference. If you have an issue with your neighbours noise, our policy is that you need to try to resolve it directly with them, in a respectful way. If this doesn't resolve the issue, you can submit a complaint through the YWCA Tenant/Resident complaint portal. We will offer conflict resolution. If both parties do not agree to conflict

resolution, the next step will be dependent on the time and type of noise. If the noise is not a breach of the tenancy agreement, we will not take action. For example, vacuuming at 10:30 p.m. would be a breach of the tenancy agreement, but noise from a children's birthday part at noon would not be.

54. The landlord testified that tenants are not expected to vacuum clean or do the laundry between 10:00 PM and 9:00 AM, but screaming and banging are noises not accepted at anytime.

55. The tenant submitted fifteen pages of text messages between the tenant and AW from June to November 2020. Both tenants report numerous noise complaints from several units in a cordial way and agree that the sound transfers easily between the rental units. The last text message from AW states:

Hi tenant, while I agree we are on civil terms now, I can not compromise my housing and It would be a conflict as I have been asked to testify in the past. I have made reports when necessary and though I have not made any recent reports, it does not negate the behaviors of the past. I wish you the best but I am unable to be witness.

56. The landlord sent a letter to the tenant on January 15, 2021 insisting that the tenant accept to move to one of two rental units offered in Vancouver and Coquitlam and informing the tenant that a notice to end tenancy will be served:

We have received several additional noise complaints about your unit since the beginning of January. The complaints are as follows:

- Jan 7, 1am - Sound of dragging furniture;
- Jan 10, 10:15pm - excessive noise of stomping and yelling, continued past 11:30pm; and
- Jan 12, 10-10:30pm - excessive noise of stomping and yelling.

[...]

To date, this is your sixth noise complaint on file since you moved to [the rental unit] on January 2, 2020.

[...]

Please be advised that, regardless of whether you accept this alternative unit [redacted] we will still be moving forward with ending your tenancy [rental unit]. Tenancy termination documents will be prepared and mailed to you should I not hear from you by end of day Monday, January 18th. Please plan accordingly.

57. The tenant emailed the landlord on January 19, 2021:

Since April 2020, there has been an over reporting of noise complaints. I consider this harassment and it has caused me significant stress and effected my ability to enjoy our home.

On April 01,2020 there was a noise complaint, RI yelled from our balcony for 1 hour between 12:30am-1:30am. This never happened. I responded to this false noise complaint on July 24, 2020 in an email.

On August 8th and 9th there were noise complaints about laundry machine noise. At the time I did not know the neighbour below us could hear our washing machine. She told my next door neighbour it disturbed her. She did not tell me though. After my next door neighbour let me know, I corrected the breach and did not continue to use the washing machine during quiet hours. Why did my downstairs neighbour speak to my neighbour about her concerns and not me, then make a noise complaint?

There is a noise complaint for washing machine noise at 10:00pm on September 15, 2020. Yet the machine was turned off at 10:00:20, as soon as I remembered to do so. Isn't this considered over reporting by YWCA?

On August 13, 2020 I responded to [the landlord] about a noise complaint, that was me accidentally dropping an item.

On November 3, 2020 there was a complaint about stomping at 11:30pm. Neither RI nor I stomped. I responded to this complaint in an email on November 04, 2020.

On January 07, there was a noise complaint about me moving a chair a few feet, to turn off my fire alarm.

There were exaggerated noise reports on the duration of noise coming from our apartment on January 10 and January 12, 2021.

I would appreciate there being more balance and fairness with noise complaints.

58. The tenant explained to the landlord on January 19, 2021 why she does not accept to move to the rental unit offered in Vancouver:

The property manager has let me know my family is facing eviction.

There has been an improvement in my son's behaviours since August, 2020. I've been working with a behaviour consultant. I've received respite and have hired someone to work with RI in our home, starting in February.

The recent noise complaint of him stomping is not accurate. I recently bought a maternity chair (similar to a gaming chair). He was hitting the arms of the chair and this was interpreted as stomping. I noticed him doing this at 6:30 pm last night and put 2 and 2 together. I am able to correct this breach in tenancy by changing the living room set up. He does not stomp. He yelled 2-3 times on January 10 and 1-2 times on January 12. The yelling was about 20 seconds each time. Moving will not address yelling. Yelling can be heard from below, beside and above. I've previously let you know, RI is being prescribed medication to help with sleep.

I am not able to accept the unit [the Vancouver unit].

Moving is hugely stressful for autistic people. In all probably, RI would begin to have meltdowns again. I don't know what new challenges we will face in a new apartment. I have been addressing the concerns my current neighbours have. I've continued to advocate for my son and MCFD child protection has investigated RI's father who is not consenting to mental health support for RI. [...] I do not want to disrupt RI's schooling and special needs program. This would be dysregulating for RI and meltdowns would likely start up again. [...]

Quickly responding now: this is the first noise complaint about loud music. I remember I turned on my TV and lay down on my bed. My sound bar remote was accidentally underneath me and the volume button was pushed way up. The sound became loud. I immediately turned down the volume. The dog probably did bark a few times. I think I remember being upset he barked during quiet hours. I have hired a dog trainer.

59. The tenant said that RI's father did not consent to RI's mental health treatment in 2020 and submitted RI to parental alienation. The Ministry of Child and Family Development investigated RI's father and RI has been able to access mental health treatment since 2021.

60. The landlord affirmed that after she served the Notice there was no change in the tenant's behaviour and the landlord continued to receive several noise complaints.

61. Tenant ME (unit 604) submitted a complaint on March 24, 2021:

I would like to file a complaint against [the tenant]. Last night I was communicating back and forth with my neighbour AW regarding music and noise coming from [the rental unit]. It escalated all evening from 9pm until 1am. AW told me that she texted [the tenant] multiple times and [the tenant] never responded.

62. The tenant stated the complaint submitted by ME was valid, but RI did not yell.

63. The tenant emailed the landlord on April 15, 2021:

I am not aware of there being loud banging for 3 hours on March 23. RI did shut his door loudly once. I've placed pool noodles on his door and on his closet so there will be no noise transfer moving forward. This is something you could have suggested to me as a solution. I found this solution on my own research. RI did

not yell for 3 hours on March 23. He did yell twice for a period of less than 90p seconds each time.

Unit 603 contacted the police on March 23. The police banged at my door at about midnight. We were in bed. I have a high needs, special needs child who's anxiety has increased because of ongoing abuse. On March 11, MCFD has opened a child protection file on RI's dad. I am also addressing this abuse in family court. I will be making a complaint in the portal about police being contracted.

Since the eviction, I've received advice from RI's pediatrician for assisting with RI's sleep. In your letter to me there is only one complaint for noise after 10pm. I have been working hard to follow section 46.1.

The complaints are excessively exaggerated.

I'd like to remind you, RI has an upcoming appointment with a psychiatrist on April 07. I will be discussing options for medication for RI to address issues around sleep, anxiety and depression.

64. The tenant submitted a letter signed by a family support worker on April 4, 2021:

I have known [the tenant] for 5 years as she has attended three of the parenting groups that I have facilitated and currently is still attending one. [the tenant] is a loving and caring mother to her son RI. When I have witnessed her with her son she has always been kind and patient with him while maintaining parenting boundaries even under extenuating circumstances.

[the tenant] is an excellent caregiver and teacher to her son and she is very knowledgeable about the Distance Learning (DL) program she has her son enrolled in, I often refer to her as a resource when I need more information regarding DL. She is very diligent about lesson plans, fun activities and hiring appropriate professionals to support RI. RI faces many challenges due to his neurodiversity. One such challenge is transitioning to change. I have witnessed her working with childminding staff and myself to best support RI so she could attend weekly parent groups when there were staff changes. RI sought [the tenant]'s support when he was challenged by this situation. [the tenant] took the time to assist RI to become comfortable with the new childminder.

[the tenant] is very knowledgeable about RI's diagnosis and I trust her judgement regarding her support of her son. It is extremely hard work to support a neurodiverse child but [the tenant] is always up to the challenge and supports her son with empathy and without complaint. She is also a very strong advocate for RI, ensuring that he is included and supported by others.

In summary, [the tenant] is a very loving and patient mother who loves spending quality time with her son. She is always thinking of him and his needs even when he is not with her.

65. The tenant emailed the landlord on April 15, 2021:

On Sunday April 10th, I was taking apart my son's loft bed at 2:50pm. I used my hammer for 8 seconds. The tenant below banged on her ceiling multiple times. I used my hammer for 6 more seconds to finish the job. The tenant below again banged on the ceiling multiple times, below where I was standing.

Today on Friday April 15th, at 6:50 pm, I heard this loud repetitive banging on our ceiling again.

The tenant below has banged on our ceiling in the past, as well. Once when I was fixing something for 40 seconds at about 7:30 pm. I have not been able to have a conversation with her because she avoids talking with me.

The tenant below seems to have unfair and unreasonable expectations for quiet in her unit. This intentional banging directed at where we are standing is very shocking and upsets us.

66. The tenant submitted a letter signed by an autism support consultant on April 25, 2021:

I have been working with [the tenant] as an autism support consultant since January 2018. We talk monthly to discuss services and strategies that may help her son, RI's development.

RI is diagnosed with autism spectrum disorder. I also communicate with [the tenant] regularly via text. In the summer of 2020 [the tenant] and I spent several meetings discussing how she can best support RI in having a smooth transition at bedtime and not disturb the neighbours by being too loud. She keeps me updated on his progress and discusses challenges as they arise.

[the tenant] has completed a variety of training that I have suggested to acquire further skills to support RI: Low Arousal technique, Collaborative and Proactive Solutions method, and Self- Reg Parenting course.

[the tenant] has always been punctual and respectful in our meetings and she is very conscientious about completing the homework I assign.

67. The tenant emailed the landlord on April 30, 2021:

My son was not in my care from March 28th- April 12th at 6pm while I fought for his safety in family court.

I've done the investigating you requested, the banging is coming from the noisy rooftop machinery as well as the unit below AW and another unit on the fifth floor. [redacted for privacy] in 406, says she hears it frequently, as well. This banging is vibrating though the thin walls at night. It sounds like running and thumping. I hear it from my bedroom wall and RI's bedroom wall. The last time I heard this banging noise was on April 28th between 10pm-2am. It wakes me up at night.

68. On May 25, 2021 RI started attending in person school and attended summer school from July 5 to August 27, 2021.

69. The tenant submitted a complaint against tenant AW on June 02, 2021:

I heard banging on and off while in RI's room between 10:00-10:25pm. I thought it was coming from AW's unit.

Tonight on June 2, I heard banging on and off while in RI's room between 10:00 10:25pm. I thought it was coming from AW's unit.

I went on my balcony and saw the tenants below AW were awake with their lights on. I could hear them speaking loudly as their windows were open.

It seemed like the banging was against the shared wall of RI's room and AW's room.

This banging noise did not disturb us and I do not wish for a complaint to be sent to [redacted for privacy] (I think she lives below AW) In April I received noise complaints for banging when RI wasn't in my care. On April 28th I received a noise complaint for a lot of banging. We did not bang.

Has YWCA considered adjusting their noise policies? Perhaps noise should be above a certain decibel to be considered as a formal complaint.

70. The landlord sent a warning letter to the tenant on April 12, 2021 because of complaints submitted by AW on April 11, 2021 and ET on April 12, 2021:

Shortly after we sent out you the breach letter this morning, we received another complaint from a different tenant. Please note that this letter serves as an addendum to the letter sent this morning.

The second complaint we received about your unit:

April 10, 2021 - after 10pm -lots of noise, banging specifically, could be heard from the unit, disrupting the tenant's sleep;

April 11-12, 2021 - almost midnight and at approximately 2am on the 12th - sounds of heavy furniture being dragged and heavy items being dropped on the floor

As noted in the previous letter delivered to you this morning, this is a breach of section 46.1 of your Tenancy Agreement.

71. The tenant testified that on June 26, 2021 RI yelled one sentence from the rental unit's balcony at 9:48 PM during a heat wave.

72. The tenant emailed the landlord on July 12, 2021:

I received a complaint for banging and stomping last night on July 11. I also received a complaint for banging on June 26th.

There was no banging or stomping on either of these nights coming from my unit. My son was not in my care last night and I had a quiet evening watching Netflix. I heard banging and stomping last night after 10pm. I often hear banging and stomping late at night.

73. The tenant emailed the landlord on August 16, 2021:

Please remove the complaint about banging and screaming. My son knocked on the 6th floor door briefly and there was no screaming. He was hoping a neighbour would help, instead we've received a complaint. I let RI know we would have to seek help at the front of the building. We left the 6th floor quickly.

74. The tenant emailed the landlord on August 18, 2021:

I've thought about responding to the complaint RI screamed into the hall as a neighbour walked past many times.

On August 17, 2021 I arrived home at approximately 5pm and RI was excited because he was having a play date. RI made a happy noise as I was entering our apartment.

RI did not scream into the hallway as a neighbour walked past. RI had no idea AW was coming off the elevator and did not see her. The way this has been twisted into something it was not during YWCA staff testimony has disturbed me greatly.

RI and I have been friendly to our neighbours in the common areas since moving in. The cameras have recorded us smiling at and chatting with neighbours daily.

75. The tenant submitted a ticket for a movie theatre on August 29, 2021 at 8:15 PM in Langley, BC and photographs of RI watching the movie on August 29, 2021 at 8:25 PM.

76. The tenant said that RI struggled in the spring and summer of 2021, but his mental health has improved.

77. The tenant emailed the landlord on October 21, 2021: "On October 20, 2021, from approximately 5:30pm-6:45pm, RI was lying in his bed watching YouTube. He did not jump at all".

78. Tenant ET submitted a complaint on December 21, 2021:

Good evening! just want to let you know, that I'm already in bed and half asleep, then I heard a lot of continuous stomping, dog barking at [rental unit] at 10 :40 pm

then pass 11 pm there still making noises. This is happening almost every night there like that, they don't care who leaves below them, **I'm just concern about my son health condition, he cannot sleep because of a loud noise upstairs.** Please help me and do something about this. I've been complaining about this for quite awhile now. They still haven't change. Please help us.

(emphasis added)

79. The tenant replied on December 21, 2021: "There was absolutely no stomping on December 21, 2021. There was also no continuous yelling and swearing by RI. I absolutely would not and did not allow that. There was no dog barking".

80. Tenant ME submitted a complaint on February 27, 2022:

The tenant has a large black dog and it's locked in her car for the past 5 hours. It's been incessantly barking for over an hour. She has the leash hanging out of the car so that the dog can't even lay down.

81. Tenant ET stated once again on March 27, 2022 that her son's health is affected due to the noise originating from the tenant's rental unit:

Good Evening it's already 11:30 pm 3/27/22, I would like to ask you that someone do something about [the rental unit] doing laundry at this time, she keep doing this again and again! I don't know why she's doing this if she's doing this intentionally? This is not acceptable anymore my son have school I have to go to work early, we cannot sleep of her noises, I just don't understand that she always start laundry at night, hopefully change the time no Laundry after 9pm please. Last Friday 3/35/22 running, jumping, screaming, banging the wall, slammed the door. It's been happening many times there noises upstairs. **This is not acceptable anymore it really affects for my son's health**, she doesn't care who live below her there is no consideration if someone already sleeping or resting.

(emphasis added)

82. The tenant replied on April 01, 2022:

On March 27th and March 28th I did not have laundry machines on from 9:30pm until 1am. I did not put our tenancy in further jeopardy by breaching the tenancy agreement, nor did I disturb my neighbour below by doing that. I did wash one load in my washing machine both nights and the machine was off before 10pm.

The noise on March 25th at 8pm was not as described and lasted approximately one minute. There was no noise that did or could have created a hazard.

83. The tenant submitted a letter signed by the tenant from unit 407 on April 29, 2022: "I frequently hear stomping in the unit above me during the day and until late at night."

84. The tenant submitted a letter signed by a respite worker on April 29, 2022, stating that the tenant's neighbours are "intolerant of unavoidable noise":

I've been working as a respite worker for [the tenant] on the weekends, since September 2021. I am her son RI's caregiver. RI and I participate in various activities such as playing basketball, glow in the dark mini golf, watching movies, playing cards and assembling furniture.

I work with RI on the weekends. About half the sessions are indoors. RI's Mom, [the tenant] is very conscientious of being quiet in her apartment. I have observed her walking gently, closing cupboards and doors softly, placing items in the closets carefully, and being soft spoken. [the tenant] doesn't allow her dog to bark. She also reminds RI to be very quiet at all times. [the tenant] reminds RI to have an indoor voice, close the lid of their ottoman gently and to push back the foot stool of their recliner carefully. She doesn't allow RI to play catch with balls indoors, to step off a chair without help, or do anything that could generate noise for her neighbours.

I think it's all a bit over the top. I've lived in apartments or town houses since my children were born. I've never had to monitor myself or my family for everyday noise, the way [the tenant] feels she needs to in her apartment. When I started working in [the tenant]'s home, she stated, "You need to walk with a very light step." She was concerned if I walked in a normal way, It might be interpreted as stomping by the tenant below her. I oblige and walk extremely softly, each time I'm in the families home.

It appears, the neighbour living in the unit below [the tenant] is intolerant of unavoidable noise. On Sunday April 10th, 2022 at 2:50pm, I was working and observed [the tenant] taking apart RI's bed. She used a hammer on the side of the bed for 8 seconds. The tenant in the unit below banged hard on her ceiling 4 times. The banging was coming from below [the tenant]'s feet. [the tenant]'s expression was one of shock. She paused for a moment and quickly hammered another 6 seconds to complete the job. The tenant below banged hard against her ceiling another 4 times.

85. The tenant submitted a letter signed by an occupational therapist on April 29, 2022:

I accepted a referral for the tenant on October 28, 2021 and began providing occupational therapy assessment and treatment in her home as well as in the community. We meet approximately one time per week, as our appointments last between 60-90 minutes.

In my visits to her home, the tenant has reported she does not have a working dryer. I have observed that she hangs clothing, towels, and bedding to dry using the doors and other surfaces in her suite, consistent with her report. During treatment visits on December 6, 2021 and February 28, 2022, I worked with the tenant to develop strategies to manage her laundry without a working dryer. I have observed clothing and towels hanging to dry in the tenant's suite every week during March 2022 and April 2022.

As an OT, I help my clients with functional movement and pacing so they can manage their symptoms and pain. As the tenant does not own a dryer, hanging clothing is a responsibility she has and we incorporate management of her MVA injuries into our sessions during this activity.

86. The tenant affirmed that the support workers did not provide services to RI after 10:00 PM.

87. The tenant submitted a letter from unit 503 dated May 01, 2022:

My experience living at [the rental building] was terrible. It took months for management to do any repairs after multiple requests. I heard stomping from the unit above me, 603, in every room of my apartment other than the bathroom. The stomping occurred early in the mornings, all day long and occasionally at night. I also heard AW in unit 603 yelling most evenings. She would also drop items in her unit. There was a dog on my floor who barked constantly. My walls would bang and shake. I barely slept. The noise transference in the building was awful. I complained to YWCA about the noise and they didn't provide a solution. I now live in another apartment in Vancouver and it is so much better and quieter.

88. The tenant submitted a letter signed by the tenant from unit 601 dated May 02, 2022:

[...], I live in apartment 601, directly across the hall from [the tenant]. In the 2 years I have lived at [the rental building] she has been a kind and courteous neighbor. I have never had a reason to file a noise complaint, as we understand her son is a child with Autism. The few times we have heard voices they were not bothersome, and we have never been woken up, or have had any concern about any noises coming from her apartment.

In my experience, and from talking with other women living in the building the acoustics, (being able to hear our neighbors), do not appear to be ideal. It is a wood framed building, and the apartments have laminate flooring. I had some difficulty with the woman that lived below me when we first moved in. She was concerned by noise that came from my apartment; walking, cooking, and regular everyday activities became an issue. A formal complaint was made, and I needed to email property management so they could clarify for her what noises are considered appropriate and inappropriate. I haven't had an issue since. A letter was posted on all apartment doors, and it spoke of this issue.

89. The tenant emailed the landlord on May 06, 2022:

On April 30th- May 01, 2022, absolutely no furniture was dragged or moved from 11pm 12:30am. I would not breach my tenancy agreement or disturb my neighbours by doing that. I have an upcoming RTB hearing with YWCA, I would very much like to win.

I was using my printer in my living room that shares a wall with my son's bedroom. Is it possible the tenant's below are mistaking a printer in use with furniture being dragged? It is either that or they are lying or hearing furniture being dragged from another unit.

90. Tenant ET submitted a complaint on May 01, 2022:

Good Morning, today is already 12:30 am Sunday morning May 1, I just got home from work, [the tenant] upstairs dragging furniture again, above my son's bedroom, I have no idea why she's rearrange her furniture at this time, my son told me she start dragging furniture pass 11 pm last night.

I don't understand why she need to do this in the evening, why not in the morning or afternoon. This is not acceptable at all.

91. The tenant submitted a letter signed by tenant SS on May 04, 2022:

I moved to the [rental building] on January 01, 2020. I moved out of the building on August 01, 2021. I resided in unit 503, facing south. [...]

My experience living at the [rental building] was terrible. It took months for management to do any repairs after multiple requests. I heard stomping from the unit above me, 603, in every room of my apartment other than the bathroom. The stomping occurred early in the mornings, all day long and occasionally at night. I also heard AW in unit 603 yelling most evenings. She would also drop items in her unit. There was a dog on my floor who barked constantly. My walls would bang and shake. I barely slept. The noise transference in the building was awful. I complained to the YWCA about the noise and they didn't provide a solution. I now live in another apartment in Vancouver and it is so much better and quieter.

92. The landlord submitted a letter issued by ET's son's physician on May 13, 2022:

I have been following Mr. CT for an extended period of time and strongly believe that his current living situations is disrupting his ability to obtain sufficient sleep throughout the night. The patient has complained of ongoing disruption from surrounding neighbours that occur at all hours throughout the night. This patient has attempted to sleep in other areas of his apartment, however with minimal effect. This lack of sleep has resulted in increased daytime fatigue which strongly impacts his ability to concentrate and be present during important educational lessons.

[...] From a medical standpoint, quality sleep is essential to one's overall well being and therefore I would strongly appreciate if modifications could be made including stricter enforcement of noise rules/regulations.

93. Tenant ET stated on September 15, 2022:

Greetings! there was incident happened last Sept. 12 pass 12. I was about to throw my garbage then [the tenant] approached me, asking about the laundry (washing machine and dryer). The laundry that she referring to is the noise that coming from her unit. I don't know why she confronted me about it, wherein is true that is a noise came from her unit and I also mention the other noises created by there furniture (after 10 pm). It really bothers me and my son specially when school started he can't concentrate. It's been happening for awhile and also, I'd like to add the drip of dirty water coming from her balcony. I'm keeping my balcony neat and clean.

I can't able to put my umbrella because of dirty water dripping.

Two days ago she let her dog to the balcony at around 1 a.m and keep barking, when everybody sleeping.

94. The tenant stated that her dog barked on some occasions, but she trained the dog to stop barking.

95. On April 28, July 12, August 18 and 30, December 22, 2021, May 6 and September 21, 2022 the landlord sent warning letters to the tenant because of loud noises past 10:00 PM.

96. The tenant submitted a letter from a behaviour interventionalist:

My name [redacted for privacy]. I have been an Adapted Sports Coach /Behaviour Interventionalist with Adapted Sports Development for the past 4 and a half years. As an Adapted Sports Coach, I usually work one on one with individuals with disabilities, including Autistic youth, and we aim to teach physical activity and sports to improve physical and social skills.

I have been working with RI for almost 4 years, as of this September 2022. Our sessions usually start with me picking up RI at home. From there, we go to various parks, hikes, community centres, gyms, and other areas to do physical activity, exercise, and have fun.

As I have worked with RI for the last 4 years, RI's behaviour has continuously been improving since the throwing incident. RI's behaviour towards myself and our sessions have improved overall. RI began to consistently be open to going out more for our sessions and began coming down to meet me from the apartment without hesitation and/or reluctance. RI began to come down on time more often and seemed to be in a more positive mood and have higher spirit overall when starting the sessions. RI began to be more engaged with the activities that we do, he started to plan for the week after and we would brainstorm/write down ideas where we would try and go next.

97. Tenant ME testified that she has been living in the rental building since December 2019 and that she has been hearing yelling, loud voices, dog barking and banging originating from the tenant's unit at 11:00 PM and at midnight since when the tenant moved in January 2020 to this date. Tenant ME said that all the complaints she submitted were in good faith, she notices the noise does not originate from the rooftop but from the tenant's rental unit and that the noise has been disturbing her and affecting her right of quiet enjoyment.

98. In response to ME's testimony, the tenant affirmed that ME has not submitted complaints recently.

99. Tenant ET stated that she has been living in the rental building since November 29, 2019 and that she has been hearing loud stomping noises originating from the tenant's rental unit at 11:00 PM, 1:00 and 2:00 AM, especially when RI is at home. Tenant ET has been hearing these noises since when the tenant moved in to this date. Tenant ET testified that she and her son cannot sleep well because of the noise, and both are facing health problems due to their poor sleep quality. Tenant ET said that in her prior rental unit, where she lived for 12 years, she did not submit a noise complaint.
100. In response to ET's testimony, the tenant affirmed that she has not been responsible for noise after 10:00 PM and that she is very quiet before 10:00 PM.
101. The tenant stated that there are 31 tenants in the rental building, and only 3 of them submitted noise complaints against the tenant. The tenant testified that the majority of noise complaints were in 2020 and 2021.
102. The tenant said that in October and November 2022 RI may have yelled once or twice before 10:00 PM, as RI does not always go to bed before 10:00 PM. RI continues to receive mental health treatment to this date.
103. Social worker AL affirmed in December 2022 that she provides support to RI. AL stated that RI is not responsible for loud noise recently. AL testified that RI informed her that he would like to have a mediation process in the rental building and that RI did not deny the noise complaints. AL does not know if the noise complaints are accurate.
104. Special education assistant SW said in December 2022 that she provided support to RI from September 2019 to June 2021 one day per week for three hours. SW affirmed that RI was responsible for loud noise because of his mental health, but SW does not know if RI is responsible for loud noise in the three last months of 2022.
105. Counsel HD stated that the landlord was very patient and issued 20 written warnings to the tenant about the constant ongoing loud noises emanating from the tenant's rental unit since the tenancy started. Counsel HD testified that the tenant did not deny most of the complaints, the tenant is responsible for the noises caused by RI and the tenant did not challenge the detailed testimonies of

the other tenants. The tenant continues to unreasonably disturb other tenants and the tenancy must end.

106. Counsel AK said that the noise complaints are submitted by only 3 tenants and the noise is regular household noise. The tenant took steps to mitigate the noise and has been unfairly targeted because of RI's mental health issues. Counsel AK affirmed that most of the complaints are from 2020 and RI's behaviour has improved. Counsel AK stated the rental building has poor soundproofing, other occupants complained about soundproofing, some of the complaints are exaggerated and some complaints happened when the tenant and RI were not at home.
107. Counsels HD and AK testified they had enough time to present their evidence and cross-examine the other party's evidence.

Analysis

108. Pursuant to Rule of Procedure 6.6, 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 landlord has the onus of proof to establish that the Notice is valid.
109. The tenant confirmed receipt of the Notice on January 22, 2021 and submitted this application on January 29, 2021. I find that the tenant's application was submitted before the ten-day deadline to dispute the Notice, in accordance with section 47(4) of the Act.
110. Section 47(1) of the Act states:
- 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 has failed to comply with a materials term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

111. I accept the tenant's uncontested testimony that RI has mental health issues and was not able to access treatment in 2020 due to the pandemic's lockdown and that RI became angry, aggressive and sometimes yelled (paras 22, 30, 31 and 59).
112. I find the complaints submitted by tenants AW, ET and ME (paras 29, 34, 36, 40, 46, 47, 61, 78, 81, 90 and 93), for yelling, stomping, banging, dog barking and furniture moving noise originating from the tenant's rental unit between 10:01 PM and 3:00 AM from April 19, 2020 to September 15, 2022 are detailed and convincing. I note that tenants AW (unit 603), ET (unit 502) and ME (unit 604) live on the same floor and the floor below the tenant's rental unit.
113. I find the testimony offered by tenants ME and ET (paras 97, 99) indicating they have been hearing loud noise originating from the tenant's rental unit after 10:00 PM from January 2020 to the current time detailed and convincing.
114. I recognize the tenant took measures to mitigate the noise originating from her rental unit, such as installing pool noodles around RI's door, purchasing two air purifiers in order to keep the windows closed, a sound bar that does not cause vibration and rug pads in November 2020 (paras 51 and 52). However, I find these measures were not enough to sufficiently address the noise issue, as tenants AW, ET and ME continued to report numerous times that they can hear noise originating from the tenant's rental unit after 10:00 PM.
115. The landlord clearly explained to all the tenants that noise after 10:00 PM is a breach of clause 46 of the tenancy agreement (paras 20 and 53) and served eleven warning letters to the tenant (paras 37, 49, 70, 95) between July 08, 2020 and September 21, 2022.
116. Based on the physician's notes dated September 24, 2020 and May 13, 2022 and ET's convincing undisputed testimony (paras 48, 92 and 99), I find that ET and her son cannot sleep well because of the noise originating from the tenant's rental unit and are facing health problems due to their poor sleep quality. I find that the tenant has adversely affected the physical well-being of another occupant of the residential property.

117. Based on the ticket and the photograph submitted by the tenant (para 75), I find the tenant proved that she is not responsible for noise on August 29, 2021. However, this does not discredit the other complaints.
118. I find the tenant's complaints against other tenants (paras 35 and 69), the letters submitted by the family support worker (para 64), autism support consultant (para 66), respite worker (para 84), occupational therapist (para 85) and behaviour interventionist (para 96) and the complaints from other tenants stating the rental building has bad soundproofing (paras 83, 87, 88 and 91) do not prove that the tenant is not responsible for noise. The support workers do not live with the tenant and do not provide services to RI after 10:00 PM. Other tenants complaining about the rental building does not mean the tenant is not responsible for noise.
119. As noted in paragraph 112, the complaints submitted against the tenant are detailed and convincing. Furthermore, the tenant admitted that she is responsible for some noise in her unit in 2020 and 2021 (paras 38, 41, 44, 57) and the testimony offered by ME and ET stating that they continue to hear loud noise from the tenant's rental unit to this date was convincing.
120. The testimony offered by the tenant's witnesses (paras 103 and 104) was vague.
121. Considering all of the above, I find the landlord's evidence outweighs the tenant's evidence about unreasonable noise continuously emanating from the tenant's rental unit related to yelling, stomping, banging, dog barking and furniture moving between 10:01 PM and 3:00 AM since April 19, 2020.
122. I am very sensitive to RI's health situation and to the tenant's efforts to address the noise issues. However, considering all of the above, I find the landlord proved, on a balance of probabilities, that the tenant has been continuously disturbing other tenants in the rental building with unreasonable noise and has adversely affected the quiet enjoyment and physical well-being of other occupants of the rental building.

123. I note the landlord was cooperative and offered reasonable alternatives to the tenant, offering her two alternative rental units and financial help for the tenant to voluntarily move (para 26).
124. Considering all of the above, I find the landlord is entitled to end this tenancy, pursuant to section 47(1)(d)(i) of the Act. I dismiss the tenant's application without leave to reapply.
125. I find the form and content of the Notice complies with section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date and it is in the approved form. I confirm the Notice and find the tenancy ended on February 28, 2021.
126. As the Notice is confirmed, I make no findings regarding the other reasons cited by the landlord to end the tenancy.
127. Pursuant to section 55(1) of the Act, I find the landlord is entitled to an order of possession.
128. RTB Policy Guideline 54 provides the arbitrator may extend the effective date of an order of possession:
- However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided.
- While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:
- The point up to which the rent has been paid.
 - The length of the tenancy.
 - e.g., If a tenant has lived in the unit for a number of years, they may need more than two days to vacate the unit.
 - If the tenant provides evidence that it would be unreasonable to vacate the property in two days.
 - e.g., If the tenant provides evidence of a disability or a chronic health condition.
129. Considering the health issues faced by RI and ET and that the tenant has been occupying the rental unit since January 2020, I find it is reasonable to extend the effective date of the order of possession to twenty calendar days after service on the tenant.

130. I warn the tenant that she may be liable for any costs the landlord incurs to enforce the order of possession.

Conclusion

131. I dismiss the tenant's application to cancel the Notice without leave to reapply.
132. I grant an order of possession to the landlord effective twenty calendar days after service. The landlord is provided with this order in the above terms and must serve it on the tenant in accordance with the Act. If the tenant fails to comply with this Order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.
133. 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: February 08, 2023

Residential Tenancy Branch