



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding Pacifica Quorum  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      **CNC, OLC, FFT**

### Introduction

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

- cancellation of the landlords’ One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47
- for an order requiring the landlord 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 landlord represented by an agent CL. The tenant TW appeared for himself along with advocate LA. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the One Month Notice dated November 16, 2022. Pursuant to section 88 of the Act the tenant is found to have been served with this notice in accordance with the Act.

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

Issue(s) to be Decided

1. Is the One Month Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?
2. Is the tenant entitled to an order requiring the landlord to comply with the Act, regulations or tenancy agreement?
3. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced on October 1, 2021 and is currently month to month. Rent is \$475.00 per month and the landlord holds a security deposit of \$237.50. The tenant still occupies the rental unit.

The landlord alleged that the tenant breached a material term of the tenancy agreement and unreasonably disturbed other occupants of the rental property. The landlord gave the tenant a letter on August 11, 2022 advising the tenant that he was in breach of a material term of the tenancy agreement and advised him to correct the breach, or his tenancy would be terminated. The letter was produced in evidence.

The landlord also referred to photographs that were produced in evidence showing the tenant along with other individuals drinking and smoking in the common area of the rental property. The landlord also produced emails regarding the tenant. Two emails are from the same occupant and describe the tenant as being loud and banging on doors in the building. One email was dated November 14, 2022 and the other dated January 4, 2023. Another occupant of the rental property JB, also emailed the landlord August 9, 2022 stating the tenant was outside late at night screaming. The landlord stated that this is a residence with seniors, and some feel unsafe given the tenant's behaviour. The landlord also expressed concern that the tenant's behaviour will continue in the summer months as some of the complaints are based on the tenant's behaviour in the outside common rental property.

The tenant acknowledged receiving the warning letter August 11, 2022. He stated he was unaware of the extent of the complaints and that the notice did not provide him with enough information regarding the landlord's concerns regarding his behaviour. The occupant JB and the tenant have resolved their issues and the tenant provided a letter from JB in evidence.

Both parties agree that the tenant's behaviour has improved since he was issued the One Month Notice.

### Analysis

RTB Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy." In this case, the landlord has the burden of proving the validity of the One Month Notice served on the tenant.

The landlord's allegation is that the tenant breached a material term of the tenancy agreement which was not corrected within a reasonable time after being given written notice to do so. The letter given to the tenant regarding the breach contained the following:

The breach that has occurred is:

Under section 28 of the Residential Tenancy Act (RTA) a tenant is entitled to quiet enjoyment, including, but not limited to the rights to:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession, subject to the landlord's right of entry under the Legislation; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

The tenancy agreement was not produced in evidence. The landlord alleges that section 28 of the Act is a material term. RTB Policy Guideline 8 states in part:

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

Without the tenancy agreement I am unable to assess whether section 28 of the Act was incorporated into the tenancy agreement. Further, the letter to the tenant does not contain any information as to how the tenant is alleged to have breached section 28 of the Act. Therefore I find that the landlord has not met their onus to establish that the

tenant breached a material term of the tenancy agreement. Further the written notice does not contain sufficient information to allow the tenant to correct the breach.

The landlord also alleged that the tenant unreasonably disturbed other occupants of the rental property, The landlord has provided three emails of complaints in evidence. Two emails are from the same occupant detailing some banging and disturbance by the tenant. The other email is from occupant JB. The tenant also provided a letter from occupant JB where JB states that he has resolved his issue with the tenant and does not wish him to be evicted.

Section 47 requires that the tenant engage in conduct that unreasonably disturbs other occupants. I find that the complaints are from one tenant and describe an intermittent disturbance of banging and yelling. Over the course of three months this occupant made two complaints of what I find are a relatively minor nature.

I also have considered the evidence of the tenant that he was unaware of the nature of the complaints and the warning he received on August 11, 2022 did not provide him with detail of the behaviour that was the subject of the complaint. I also consider that both parties stated the tenant's post notice conduct has been improved. I find that the improvement in the tenant's behaviour is as a result of becoming aware of the specific behaviour that the landlord was concerned with. I find based on the actual complaints as well as the tenant's post notice conduct that his behaviour was a disturbance but did not rise to the level of an unreasonable disturbance as contemplated by the Act.

The parties are reminded that the nature of shared rental spaces require a mutual respect and understanding of the realities that accompany city living, which includes but is not limited to reasonable noise levels and unreasonable disturbances. There will be the occasional disturbance, however in this instance it doesn't rise to the level of unreasonableness as contemplated by the Act.

The One Month Notice is therefore not valid and effective. The tenant's application is granted. The One Month Notice is cancelled.

### Conclusion

The One Month Notice is cancelled. The tenancy shall continue until it is ended in accordance with the Act.

As the tenant was successful, they may withhold \$100.00 from a future rent payment in satisfaction for a return of the filing fee.

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: March 21, 2023

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Residential Tenancy Branch