



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding 1053664 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, RR, RP, OLC

### Introduction

This hearing occurred by conference call based on an Application for Dispute Resolution filed by the Tenant November 30, 2022 (the "Application"). The Tenant applied:

- To dispute a One Month Notice to End Tenancy for Cause dated November 23, 2022 (the "Notice")
- To reduce rent for repairs, services or facilities agreed upon but not provided
- For a repair order
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement

The Tenant appeared at the hearing with P.G. to assist. S.L. appeared at the hearing as an agent for the Landlord. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

I dismissed the following claims with leave to re-apply under rule 2.3 of the Rules:

- To reduce rent for repairs, services or facilities agreed upon but not provided
- For a repair order
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement

This Decision does not extend any time limits set out in the *Residential Tenancy Act* (the "Act").

The parties agreed a second One Month Notice to End Tenancy for Cause has been served on the Tenant. The Tenant has applied to dispute the second One Month Notice and this will be dealt with in another hearing for the file ending 4219. I have not considered the second One Month Notice in this Decision.

The Tenant only provided a copy of the Notice as evidence. The Landlord provided evidence. I went over service. S.L. confirmed receipt of the hearing package and Tenant's evidence on time. The Tenant said they did not receive the Landlord's evidence. S.L. said in person service of the Landlord's evidence on the Tenant was attempted the day before the hearing; however, the Tenant did not open their door and the evidence was not provided to the Tenant.

I found the Landlord did not follow rule 3.15 of the Rules about service of their evidence. I heard the parties on whether the evidence should be admitted or excluded. The Tenant asked for the evidence to be excluded. S.L. asked for the evidence to be admitted and said the evidence is mostly documents the Tenant has received in the past, S.L. had family health issues that delayed service and the Tenant could have reviewed the evidence if they had opened their door to receive the evidence the day before the hearing.

Under rule 3.17 of the Rules, I exclude the Landlord's evidence. I find it would be unfair to consider the evidence when the Tenant does not know what the Landlord is relying on for the hearing and cannot fully respond to the evidence. It is not enough that the Tenant received the evidence in the past. The purpose of service is to let the Tenant know what the Landlord will rely on and address at the hearing so the Tenant can prepare to respond to it. The Tenant cannot know what the Landlord wants to rely on at the hearing without service. I understand S.L. had family health issues that they had to deal with which delayed service; however, this does not change the unfairness caused to the Tenant in not knowing what the Landlord is relying on at the hearing to prove the ground for the Notice. I also acknowledge the point that the Tenant could have opened their door the day before the hearing and received the evidence; however, service the day before the hearing is simply not sufficient because it does not leave enough time for the party to read, understand and prepare a response to the evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the Notice and all oral testimony and submissions provided. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Should the Notice be cancelled?

### Background and Evidence

The parties agreed there is a written tenancy agreement between the Tenant and Landlord.

The Notice is in evidence. The grounds for the Notice are:

1. Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.
2. Breach of a material term.

The Details of Cause section of the Notice states that it is being issued due to noise complaints from surrounding tenants.

The parties agreed the Notice was served November 23, 2022. The Tenant said they received the Notice November 23 or 24, 2022.

S.L. testified that other tenants of the building have made consistent noise complaints about the Tenant. The noise complaints are about moving furniture, singing and the Tenant having intoxicated guests over. S.L. said the noise coming from the Tenant's unit is more than the usual noise one would expect to hear in a multi-unit building. S.L. said the noise issues with the Tenant have been going on for years. S.L. said they have talked to the Tenant about the noise issues over the years and the Tenant has had enough time to address the issues.

The Tenant denied that they make unreasonable noise. The Tenant said they have done everything they can to reduce the noise coming from their unit and that the noise is not at an unreasonable level. The Tenant said the two women who make noise complaints against the Tenant have harassed the Tenant from the start of the tenancy and the Tenant told S.L. this. The Tenant said S.L. does not take the Tenant's complaints seriously and is friends with the two women who harass the Tenant.

### Analysis

The Notice was issued under section 47 of the *Act*.

I accept that the Tenant received the Notice November 23 or 24, 2022. The Tenant disputed the Notice November 30, 2022, within the 10-day time limit.

The Landlord has the onus to prove the grounds for the Notice under rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

When a party states a version of events in one way, and the other party states an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The Notice was issued due to noise complaints against the Tenant. The parties disagreed about whether the Tenant is making an unreasonable amount of noise and the validity of noise complaints made. Given the different version of events, I consider whether there is further evidence before me to support S.L.'s version of events because the Landlord has the onus to prove the grounds for the Notice. The Landlord's evidence has been excluded because it was not served on the Tenant and therefore I cannot consider it. In the circumstances, there is no further evidence before me to support S.L.'s version of events and the Landlord has failed to prove the grounds for the Notice.

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

### Conclusion

The Notice is cancelled. The tenancy will continue until otherwise 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: April 11, 2023

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Residential Tenancy Branch