



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding SRSN VENTURES LTD and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

On January 5, 2023, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a One-Month to End Tenancy for Cause, (the “Notice”) dated December 27, 2022. The matter was set for a conference call.

Two Agents of the Landlord (the “Landlord”) as well as the Tenant and their Advocate (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

- Should the Notice dated December 27, 2022, be cancelled?
- If not, is the Landlord entitled to an order of possession?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that this tenancy began on September 1, 2020, as a month-to-month tenancy, with a monthly rent of \$800.00 and a \$400.00 security deposit. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Notice recorded that the Landlord served the Notice to end tenancy to the Tenant on December 27, 2022, by leaving the Notice in the mailbox for the rental unit. Both the Tenant and the Landlord provided a copy of the Notice into documentary evidence. The reason checked off within the Notice is as follows:

- Tenant or a person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord

The Notice states that the Tenant must move out of the rental unit by February 1, 2023. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Notice was issued due to several noise complaints, they received from the other occupants of the rental property. The complaints were regarding loud music being played. The Landlord testified they provided the Tenant with a written warning on November 5, 2022, advising them of the breach and informing the Tenant that a further breach would result in a notice to end their tenancy. The Landlord testified that they received more noise complaints on December 26, 2022, and that after this complaint they issued the Notice to end the tenancy to the Tenant. The Landlord provided a copy of a written complaint from another occupant and a copy of the written warning they issued to the Tenant into documentary evidence.

The Tenants agreed that they did play loud music but that they had done it out of frustration due to the Landlord not responding to their requests for repairs to the rental unit.

## Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Pursuant to section 90 of the *Act*, I find that the Tenant was deemed to have received the Notice to End Tenancy on December 30, 2022, three days after it was left in the mailbox for the rental unit. Pursuant to section 47 of the *Act*, the Tenant had ten days to dispute the Notice. Section 47 of the *Act* states the following:

***Landlord's notice: cause***

*47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

*(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant*

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*

*(b) must vacate the rental unit by that date.*

Pursuant to section 47, I find the Tenants had until January 9, 2023, to file their application to dispute this Notice. I have reviewed the Tenant's application for dispute resolution, and I find that the Tenant filed her application on January 5, 2023, within the legislated timeline.

I accept the agreed-upon testimony of these parties that the Tenant had played loud music to the level that it significantly interfered with or unreasonably disturbed another occupant or the landlord, and that the Tenant played loud music intentionally to disturb the Landlord and other occupants.

Therefore, I find that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord, and I dismiss the Tenant's application to cancel the Notice dated December 27, 2023.

Section 55(1) of the *Act* states:

***Order of possession for the landlord***

*55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*  
*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I have reviewed the Notice to end tenancy, and I find the Notice complies with section 52 of the *Act*. As I have dismissed the Tenant's application, pursuant to section 55 of the *Act*, I must grant the Landlord an order of possession of the rental unit.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective not later than **1:00 p.m. on May 31, 2023**. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the Tenant.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in their claim, I find that the Tenant is not entitled to the recovery of their filing fee for this application.

### Conclusion

The Tenants' application to cancel the Notice, dated December 27, 2022, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlord effective not later than **1:00 p.m. on May 31, 2023**. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 4, 2023

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Residential Tenancy Branch