



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding O787554 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC  
                                 CNC FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlord and Tenant. The Landlord filed on December 15, 2014, to obtain an Order of Possession for cause. The Tenant filed on December 3, 2014, to obtain an Order to cancel a Notice to end tenancy issued for cause and to recover the cost of the filing fee from the Landlord for his application.

The hearing was conducted via teleconference and was attended by the Landlord, the Owner, and the Tenant. Although the Owner attended this proceeding he did not submit evidence. All of the Landlord's evidence was submitted by the Resident House Manager, hereinafter referred to as the Landlord. Each party acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

The Residential Tenancy Branch Rules of Procedure # 11.11 provides that except as provided by the Act, the arbitrator may exclude witnesses from the in-person or conference call dispute resolution proceeding until called to give evidence and, as the arbitrator considers it appropriate to do so, may exclude any other person from the dispute resolution proceedings.

The Landlord had three other tenants attend the hearing as witnesses, which I excluded from the hearing, in accordance with the Rules of Procedure # 11.11. The Landlord submitted that the witnesses were in attendance to reiterate the same evidence that they had provided in their written statements submitted in the Landlord's documentary evidence. Based on the foregoing, I found it unnecessary to hear oral testimony from the witnesses as I considered their written statements.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however

each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

1. Should the 1 Month Notice to end tenancy issued April 19, 2013, be upheld or cancelled?
2. If upheld, should the Landlords be granted an Order of Possession?

#### Background and Evidence

The undisputed evidence was that the Tenant has occupied this rental property since approximately December 2011. Rent of \$525.00 is due on or before the first of each month and includes utilities. The rental property consists of the main floor of a house with 5 bedrooms that are rented out as single room occupancies (SRO) with the tenants sharing common areas which include the living room and kitchen.

The Landlord testified that he has been house manager at this property since October 2013. He stated that since May 2014 he has been dealing with the Tenant's inappropriate intoxicated (drunk and high) behavior. He has had to issue the Tenant several verbal warnings and reminders about the house rules. He argued that the situation is now one where the Tenant has been threatening the Landlord and other tenants and intimidates them to the point that the other tenants now hide in their bedrooms for safety which caused them to serve the Tenant a 1 Month eviction Notice on November 24, 2014.

A copy of the Notice was provided in evidence and was issued pursuant to Section 47(1) of the Act for the following reasons:

- Tenant is repeatedly late paying rent
- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant or a person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonable disturbed another occupant or the landlord
  - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord

- Tenant has engaged in illegal activity that has or is likely to
  - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
  - Jeopardize a lawful right or interest of another occupant or the landlord

Four statements written by other tenants were submitted into the Landlord's evidence. A small sampling of each statement included the following comments:

1) *S.R.R. wrote on December 12, 2014*

*...all informed of house rules, which were basically: no illegal drugs at all and NO uncivil intoxication on the property, in areas outside your room [sic].*

*...due to [tenant's name] activities, which have included... almost daily, common area drunken intoxication of an uncivil nature, in the common area*

*...The daily regularity of all these activities, have made all of the other tenants very unsure of their own safety and security.[sic]*

2) *D.F.V.W. wrote on December 12, 2014:*

*When speaking about the Tenant's actions on November 21, 2014: ...He came out of his room yelling at me, blaming me for what had happened to [the tenant's female guest]... putting her out into the cold... The Police came, and treated it like a simple noise violation... The tenants all stayed in their rooms, locked up for the rest of the night... and were all scared of him (the tenant).*

The chronological list of events written by D.F.V.W. continued to list the Tenant's inappropriate actions, such as: slamming pots and plates to "disturb and violate the peace" which occurred after the date the Tenant had been served the 1 Month Notice

3) *P.S. wrote:*

*On November 21... that night, very drunk, [tenant's name] turns up music full volume, leaving the door open yelling lyrics of the songs like a drunk frat boy.*

*The police were called and "They turn off the music and tell [tenant] to stop." Later that evening the Tenant says to P.S. "You can't even get the cops to act for you"*

4) J.S.S. wrote on December 04, 2014:

*I have since then, received repeated testimony from the other residents here of various threats of violent retaliation against the other members of this household on the part of [tenant's name].*

The Landlord clarified that the threats made by the Tenant have included him saying “I’m going to take care of you buddy” and “I’m going to get someone to take care of you” which have been direct to the Landlord and other tenants.

The Tenant began his testimony by stating “they are all lying” and then went on to argue that other tenants have been stealing his beer and wine from the fridge. When I asked the Tenant to speak directly to the allegations that he has been disturbing and threatening other tenants the Tenant stated that the police have been called on several occasions and that the female tenant D.M. “fights with anyone”.

The Tenant submitted that the house rules changed when the new landlord moved into the rental unit and were changed to be against him directly. He argued that his eviction was the result of the Landlord demanding more rent money from him because he had a guest staying in his room.

In summary the Landlord stated that they have attempted to work with this Tenant about his behaviour and breaking the rules since May 2014 and they never demanded more money. The Landlord stated that they had tried to obtain the police records as evidence which outlined the problems they have had; however, those records were not available in time for this hearing. He argued that the Tenant did physically threaten them and the other tenants are now living with a lack of physical safety.

### Analysis

Upon review of the 1 Month Notice to End Tenancy I find the Notice was served upon the Tenant in a manner that complies with section 89 of the Act. The undisputed evidence was that rent is payable on the first of each month and the Notice was issued on November 24, 2014 listing an effective date of December 24, 2014.

Section 53 of the Act stipulates that incorrect effective dates automatically change as follows:

- 53** (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

(3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) [*tenant's notice: landlord breach of material term*], 46 [*landlord's notice: non-payment of rent*] or 50 [*tenant may end tenancy early*], if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

(a) that complies with the required notice period, or

(b) if the landlord gives a longer notice period, that complies with that longer notice period.

Based on the above, I hereby find the effective date of the Notice was automatically corrected to be **December 31, 2014**, in accordance with section 53(3) of the *Act*.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

Section 28 of the *Act* states that all tenants are entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I favored the Landlord's evidence over the Tenant's submissions. I favored the Landlord's evidence as it was supported by the other tenant's written submissions and included a chronological list of events that were plausible. I found the Tenant's explanation that everyone else is a liar and the rules were only changed to be against him to be improbable. When considering the undisputed testimony that the Landlord had been dealing with the Tenant about his guest and both their behavior for several months; and the fact that the Tenant admitted that the police had been called on some occasions; I find it plausible that the Tenant's actions have been disrupting the quiet

enjoyment of the other tenants. I also accept that the Tenant's behavior is threatening to the point that the other tenants are now concerned for their safety.

Based on the above, I find the Landlord has submitted sufficient evidence to prove the Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. Accordingly, I upheld the 1 Month Notice issued November 24, 2014, and I grant the Landlord's application for an Order of Possession.

As I have upheld the Notice, I dismiss the Tenant's application, without leave to reapply. The Tenant has not succeeded with their application; therefore, I decline to award recovery of the Tenant's filing fee.

### Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Tenant's application is HEREBY DISMISSED, without leave to reapply.

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: January 07, 2015

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Residential Tenancy Branch

