



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

On March 26, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”).

The Tenant attended the hearing. T.L. and D.G. attended the hearing as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that the Landlord was served with the Notice of Hearing package and some evidence by placing it in the Landlord’s mailbox; however, he was not sure when this was done. T.L. confirmed that he received this package and that he was prepared to proceed. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been served with the Notice of Hearing package and some evidence.

The Tenant advised that additional evidence was served to the Landlord by placing it in the Landlord’s mailbox, but he was not sure when this was done. T.L. confirmed that he received two envelopes of evidence approximately three weeks ago. Based on this

undisputed testimony, I am satisfied that the Tenant's evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure. As such, I have accepted this evidence and will consider it when rendering this Decision.

T.L. advised that the Tenant was served the Landlord's evidence by hand approximately three weeks ago. The Tenant confirmed receiving this evidence. Based on this undisputed testimony, I am satisfied that the Landlord's evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 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*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 2, 2012, that rent was currently established at \$345.00 per month, and that it was due on the first day of each month. A security deposit of \$175.00 was also paid to the Landlord. A copy of the tenancy agreement was not submitted as documentary evidence.

All parties also agreed that the Notice was served to the Tenant by hand on March 22, 2021. The reasons the Landlord served the Notice are because the "Tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and/or put the landlord's property at significant risk" and because the "Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park." The Notice indicated that the effective end date of the tenancy was April 30, 2021.

T.L. advised that there have been ongoing complaints against the Tenant due to his loud music, his hostile and belligerent attitude towards the manager and other residents of the property, and his inappropriate actions. He stated that the Tenant has been warned verbally and multiple times in writing to cease this behaviour, yet the Tenant has continued to act in a defiant manner. He submitted that the Tenant has played his music at an excessive level early in the morning, drawing complaints from other residents and neighbours. As well, he testified that the Tenant has been feeding birds outside the rental unit, which has attracted birds and rodents. He has been warned to stop this behaviour; however, the Tenant has continued despite these warnings. In addition, the Tenant has thrown bird food onto other residents' balconies, likely as a vindictive measure. He submitted that the Tenant and his guests have had at least three police file numbers created based on their noise and behaviours. He also advised that the Tenant shot a squirrel, from the rental unit, with a pellet gun. He referenced the accompanying documentary evidence to support these allegations.

The Tenant advised that the warning letters provided by the Landlord were served weeks after the incidents happened and he stated that the complaints of other residents were mostly lies or fictitious stories. He stated that the names of residents in the complaint letters, submitted as documentary evidence, were redacted by the Landlord. He confirmed that "some stuff that the Landlord said was true." He acknowledged that he played loud music; however, it was not played "that early" and he turned it down after being warned. He confirmed that he had been feeding the birds for a significant period of time and was warned to stop; however, he continued to feed them for several more months before stopping. He denied throwing bird food on other people's balconies though. Finally, he denied shooting a squirrel. Rather, he stated that a rat was caught in a trap and he shot it with his pellet gun.

## Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

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

**47** (1) *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,*
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
  - (iii) put the landlord's property at significant risk.*

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As such, the onus is on the party issuing the Notice to substantiate the validity of the reason for service of the Notice.

With respect to the reasons on the Notice, while the Tenant refuted some of the Landlord's allegations, I find it important to note that he acknowledged that some were true. Moreover, he specifically acknowledged that he continued feeding the birds after being warned to refrain and that he shot some sort of wildlife with a pellet gun on the property. When assessing the evidence and testimony of the parties, on a balance of

probabilities, I find that I am doubtful of the truthfulness or reliability of the Tenant's evidence. Clearly it is evident that the Tenant was warned to refrain from certain behaviours that disrupted the quiet enjoyment of other residents, yet he continued despite these written warnings. As such, I prefer the Landlord's evidence on the whole.

Furthermore, I do not find that shooting any sort of wildlife on the property is an action that is consistent with how a person should behave in a tenancy, regardless of the circumstances. This alone, I find is sufficient evidence to justify service of the Notice. As a result, I dismiss the Tenant's Application.

Pursuant to Section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession that takes effect on **June 30, 2021 at 1:00 PM** after service of this Order on the Tenant. The Landlord will be given a formal Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit after service of the Order, the Landlord may enforce this Order in the Supreme Court of British Columbia.

### Conclusion

The Tenant's Application is dismissed without leave to reapply and the Landlord is provided with a formal copy of an Order of Possession effective on **June 30, 2021 at 1:00 PM** after service on the Tenant. Should the Tenant or any occupant on the premises 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: June 4, 2021

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Residential Tenancy Branch