



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, O, OPR, OPB

### Introduction

This hearing dealt with applications from both the landlords and the female tenant under the *Residential Tenancy Act* (the *Act*). The landlords applied for an Order of Possession for unpaid rent and for the breach of a material term of the Residential Tenancy Agreement (the Agreement) pursuant to section 55 of the *Act*. The female tenant identified Landlord AS (the landlord) as the Respondent in her application for the following:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- other unspecified remedies.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Although the landlords had three family members available to provide sworn testimony at this hearing, the female tenant (the tenant) conceded that the landlords' remaining two family member witnesses that were available for this hearing would provide essentially the same sworn testimony as that heard from the landlords and the landlords' witness, the sister of Landlord AS and the daughter of Landlord KS. Under these circumstances, the tenant did not object to the landlords' claim that the other two witnesses would provide a similar account to what had already been heard from the landlords and the witness who provided sworn testimony on the landlords' behalf.

The tenant confirmed that Landlord KS handed her the 1 Month Notice on December 5, 2013. The landlords confirmed that Landlord KS was handed a copy of the tenant's dispute resolution hearing package on December 11, 2014. The tenant confirmed that Landlord KS handed the male tenant a copy of the landlords' dispute resolution hearing package on January 6, 2014. I am satisfied that the parties served one another with the above documents in accordance with the *Act*.

The tenant confirmed that the tenants have received copies of the landlords' written evidence package. The landlords confirmed that they have received copies of the tenant's written evidence package. I am satisfied that both parties served these documents to one another in accordance with the *Act*.

The tenant said that she attempted to serve a USB stick of digital evidence to the landlords by handing it to them. When the landlords did not answer their door, the tenant testified that she left this digital evidence on the landlords' front porch. The landlords denied having received any digital evidence from the tenant. As I am not satisfied that the tenant served her digital evidence to the landlords in accordance with the *Act*, and furthermore heard testimony from the tenant that she had not checked with the landlords before serving this evidence to the landlords as to whether they would be able to gain access to this digital evidence, I advised the parties that I would not be considering the tenants' digital evidence.

At the commencement of this hearing, the landlord confirmed that the landlords' application for an Order of Possession for unpaid rent was submitted in error as no 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) has been issued to the tenant. The landlords withdrew their application for an Order of Possession for unpaid rent. The landlords' application for an Order of Possession for unpaid rent is hereby withdrawn.

At the hearing, the landlord made an oral request for an Order of Possession based on the 1 Month Notice if the tenant's application to cancel that Notice were dismissed.

#### Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any other orders be issued with respect to this tenancy?

#### Background and Evidence

The landlord gave undisputed sworn testimony that this fixed term tenancy for a basement suite in the landlords' home began on November 16, 2013. According to the terms of the written Agreement between the parties, this tenancy is supposed to last until March 3, 2014. Although the landlords claimed that they had entered into written evidence a copy of that Agreement, the landlords' written evidence package did not include this document. Unless a new Agreement is signed by the parties, the tenancy is scheduled to continue as a periodic tenancy after March 3, 2014. Monthly rent is set at \$800.00, payable in advance on the first of each month. The landlords continue to hold the tenants' \$200.00 security deposit and \$200.00 pet damage deposit, both paid on November 16, 2013.

The landlord gave undisputed testimony that the landlords agreed to let the tenants move into the rental unit on November 16, 2013, without requiring any rent payment for November 2013. The parties agreed that the tenants paid their December 2013 rent. The tenant testified that she attempted to pay rent owing for January and February 2013, but the landlords have refused to accept these payments. The landlords confirmed that the tenants have not paid rent for either January or February 2014, but as of the time of this hearing, the landlords had not issued any 10 Day Notice to the tenants.

Most of the landlords' written evidence and sworn testimony from the two landlords and a sister of Landlord AS was directed at the impact that the tenants' two dogs are having on the health and safety of the landlords and their family. The landlords maintained that they had understood that the tenants had a single small dog. After the tenants began their tenancy, the landlords realized that instead of a single small dog, the tenants had a pit bull and a presa canario dog. The landlords do not consider either of the tenants' dogs to be small dogs.

The tenant testified that the tenants advised the landlords before they signed the Agreement that they had two dogs and that they wanted the landlords to meet the dogs before they signed the Agreement. For various reasons, the tenant was unable to bring her dogs with her to "introduce" the dogs to the landlords to ensure that this was a suitable arrangement for all before she signed the Agreement.

The landlord entered written evidence and sworn testimony regarding his health condition and the effect that the tenants' dogs are having on his health. He testified that the tenants' dogs are constantly barking and fighting with one another and that his family finds the presence of these dogs he described as "vicious" in this property truly frightening. He said that his chronic health condition has been impacted by the tenants' dogs as his sleeping patterns have been seriously disrupted as have his mother's conditions. He also testified that the dogs were frequently using the backyard and his family has been afraid to use that large backyard as the dogs may be let loose at any time. He submitted a January 24, 2013 note from this doctor confirming that he is under his doctor's care for "a significant chronic medical condition (congenital heart disease requiring multiple surgeries including future planned revisions) which requires that his home situation have minimal disruptions to his sleep and activity patterns." This note also stated that the landlord is "immunocompromised and is susceptible to infection if there is environmentally poor hygiene including pets that not well-maintained."

The landlords also entered into written evidence a December 16, 2013 letter from the same doctor who is also caring for the landlord's mother who also resides upstairs from

the tenants. This letter stated that the landlord's mother has "a significant medical condition (severe migraines) which requires that her home situation have minimal disruptions to her sleep and activity patterns." He also noted that the landlord's mother has a congenital heart condition that puts her at risk for infectious disease. The landlords' witness, the daughter of the mother with a heart condition, testified that her mother's blood pressure has increased significantly as a result of the disruption caused by the tenants' dogs. She also testified that she cannot take her young child to the landlords' acreage backyard because of the fear that the dogs will be let loose there.

Landlord KS, the other landlord's father, testified that his daughter and grandson cannot use the backyard as the dogs are in that yard every day. He said that his wife cannot calm down due to the presence of the dogs.

The tenant disputed the landlords' claims that her dogs are constantly barking and fighting and slamming into doors and walls. She said that for the most part the dogs only bark when the landlords' family is fighting and yelling at one another or the tenants. She said that she sleeps well and that the landlords have greatly exaggerated the impact that the dogs are having on the landlords' health and safety. She testified that as of December 29, 2013, she has been unable to let her dogs access the very large backyard of this property because the landlords have removed a gate that previously confined them to the backyard. She did not dispute the landlords' claim that her dogs used the backyard before December 29, 2013.

The landlord testified that he spoke with the tenants about their dogs a number of times before the 1 Month Notice was issued. He also said that he gave the tenants letters about this matter. The only letter to the tenants the landlords entered into written evidence was a December 19, 2013 letter, 14 days after the landlords issued their 1 Month Notice.

### Analysis

Although the tenant testified that she was willing to vacate the rental unit, the parties could not come to an agreement regarding the terms whereby this tenancy could be ended. This process was complicated by the tenants' failure to pay rent for January or February 2014.

While there is undisputed sworn testimony that the tenants have not paid their rent for either January or February 2014, as of the date of this hearing, no 10 Day Notice had been issued to the tenants. Later that day, the landlords issued a 10 Day Notice and asked Residential Tenancy Branch (RTB) staff that a copy of it be added to their written evidence for this hearing. Since a tenant issued a 10 Day Notice on February 3, 2014

has 5 days to either pay the rent identified as owing in full or file an application for dispute resolution and this Notice was not even issued until **after** this hearing had been completed, I cannot possibly consider the landlords' newly issued 10 Day Notice as part of my consideration of either of the applications before me. The landlords would be at liberty to file a new application for dispute resolution with respect to the 10 Day Notice if the landlords do not receive the outstanding rent identified in their 10 Day Notice.

The landlords entered into written evidence a copy of their 1 Month Notice of December 5, 2013. The landlords incorrectly identified January 5, 2014 as the effective date when the 1 Month Notice was to take effect. The corrected effective date of that Notice is January 31, 2014. The landlords' 1 Month Notice cited the following reasons for the issuance of the Notice:

*Tenant or a person permitted on the property by the tenant has:...*

- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;...*

*Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.*

At the hearing, neither landlord was able to provide any meaningful details to demonstrate any substance whatsoever to the landlords' second reason for seeking an end to the tenancy as outlined above. I find that there was no prospective tenant or purchaser of the property, and as such, the landlords' inclusion of the second reason as set out above appears to have resulted from the landlords' misunderstanding of the 1 Month Notice form.

Although the landlord applied for an Order of Possession on the basis of the tenants' alleged breach of a material term of their Agreement, the landlords did not identify this on the 1 Month Notice as one of the reasons for issuing their 1 Month Notice. I dismiss the landlord's application for an Order of Possession on the basis of an alleged breach of a material term of the Agreement as this was not included as one of the reasons for issuing the 1 Month Notice. I also note that the landlords did not enter into written evidence a copy of the Agreement. As such, the landlords have not provided evidence to show the terms of the Agreement that were allegedly breached.

In considering this matter, I emphasize that many of the complaints included in the landlords' written evidence and in their sworn testimony were unrelated to the reasons cited in the landlords' 1 Month Notice. For the purposes of this hearing and the applications before me, the tenants' admitted failure to pay their rent for either January

or February 2014 is not a matter that I can take into account in reaching my decision. The only possible valid reason cited in the landlords' 1 Month Notice that is properly before me is the landlords' claim that the tenants had "seriously jeopardized the health or safety or lawful right of another occupant or the landlord."

I find little merit to the landlord's claim that the presence of two dogs in the basement suite as opposed to one smaller dog has compromised his autoimmune system and made both he and his mother more susceptible to infectious diseases.

Although I have little doubt that the landlords' family is finding the presence of the dogs stressful and affecting their sleeping patterns, the tenant provided sworn testimony that the landlords are frequently yelling and fighting with one another and with the tenants. Assessing responsibility for the increased stress levels in this rental property is difficult to determine under these circumstances. However, there is at least some limited written medical evidence that both the landlord and his mother have significant medical conditions that make them more susceptible to stress of this nature.

Of more concern to me are the allegations raised by the landlords with respect to their concerns about their safety and the safety of their family members. While the tenant dismissed these concerns, claiming that her dogs are very gentle, there is evidence that the tenants' dogs have used the backyard on a fairly frequent basis in the past. Once the landlords complete the repairs to the gate in this yard, there is every reason to believe that the tenants' dogs would once again be allowed to use the backyard, a condition that appears to have been included in their Agreement. Based on the sworn testimony of the parties and the description of these dogs, I find that the landlords have legitimate reason to be concerned about their safety and the safety of those who visit them.

Under these circumstances, I find that the landlords had adequate reason to issue their 1 Month Notice on the basis of concerns that the tenants have seriously jeopardized their safety and to a lesser extent their health. For these reasons, I dismiss the tenants' application to set aside the 1 Month Notice issued on December 5, 2013.

Section 55(1) of the *Act* reads as follows:

**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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession, and*

*(b) the director dismisses the tenant's application or upholds the landlord's notice.*

As the tenants' application to set aside the 1 Month Notice is dismissed, I issue an Order of Possession in the landlords' favour. Due to the difficulties that the tenants may experience in locating new accommodations suitable for their needs and those of their dogs, I issue a 7 Day Order of Possession under these circumstances.

### Conclusion

The tenants' application to cancel the landlords' 1 Month Notice is dismissed without leave to reapply. I grant an Order of Possession to the landlords effective **seven days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia. I emphasize that the landlords must follow the requirements of the Act in any attempt they may make to enforce this Order. If they have any questions about the process to be followed, I urge the landlords to speak with a representative of the RTB to clarify how they can legally enforce this Order, should the tenants fail to comply with this Order.

As this tenancy is ending shortly on the basis of the dismissal of the tenants' application, there is no need to consider the remainder of the issues identified in the parties' applications. However, as noted earlier, the landlords' application to end this tenancy on the basis of a 10 Day Notice that had not been issued by the time of this hearing was withdrawn at this hearing.

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: February 06, 2014

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Residential Tenancy Branch

