



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC MNR MNSD MNDC FF – Landlord’s Application  
                             DRI CNC MNDC FF – Tenant’s Application

### Preliminary Issues

Residential Tenancy Rule of Procedure 2.3 states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Upon review of the Landlord’s application I have determined that I will not deal with all the dispute issues the Landlord has placed on their application. Not all the claims on the Landlord’s application are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the Landlord’s request for an Order of Possession for cause and I dismiss the balance of the Landlord’s application relating to the request for a Monetary Order, with leave to re-apply.

Upon review of the Tenant’s application I have determined that I will not deal with all the dispute issues the Tenant has placed on their application. Not all the items on the Tenant’s application are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the Tenant’s request to cancel or set aside the Landlord’s Notice to End Tenancy issued for cause; and I dismiss the balance of the Tenant’s claim with leave to re-apply.

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the male Landlord and the Tenant.

The Landlord filed his application on July 17, 2015 seeking to obtain an Order of Possession for cause, a monetary order, and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed her application on July 13, 2015 seeking to obtain an Order to cancel a Notice to end tenancy for cause, to dispute an additional rent increase, and to recover the cost of the filing fee from the Landlords for this application.

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.

Section 1 of the *Act* defines a landlord in relation to a rental unit, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

The hearing was conducted via teleconference and was attended by two Landlords, the Tenant, and the Tenant's assistant. Each person gave affirmed testimony. The Landlord's application listed only one Landlord while the Tenant's application named two respondent Landlords. There was sufficient evidence that both named respondents met the definition of a Landlord, pursuant to section 1 of the *Act*. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

The Residential Tenancy Branch Rules of Procedure (Rules of Procedure) # 2.5 stipulates that to the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch, the applicant must submit to the Residential Tenancy Branch: a detailed calculation of any monetary claim being made; a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and copies of all other documentary and digital evidence to be relied on at the hearing.

The only exception is when an application is subject to a time constraint, such as an application under *Residential Tenancy Act* section 38, 54 or 56 or an application under the *Manufactured Home Park Tenancy Act* section 47 or 49 [my emphasis added].

Rules of Procedure # 3.17 provide that the Arbitrator has the discretion to determine whether to accept documentary evidence that does not meet the requirements set out in the Rules of Procedure.

The Tenant confirmed receipt of the evidence served by the Landlords. The Landlords confirmed receipt of the evidence served by the Tenant and noted that the last submission of evidence was not received from the Tenant until two days prior to this hearing, on September 16, 2015. A detailed review of the evidence received from the Tenant was conducted during which the Landlords testified that they received the Tenant's first submission of evidence which her application for Dispute Resolution back in July 2015. The second package was sent to them via registered mail and post marked September 15, 2015.

The Tenant affirmed that she sent her last package of evidence to the Landlords via registered mail on September 15, 2015 and that she delivered that evidence to the Service BC office on September 10, 2015. The Tenant's last submission of evidence was not received on the hard copy file at the time of this hearing, September 18, 2015.

After careful consideration of the above, I determined that I would not be considering the Tenant's last submission of evidence as it was not served or received in accordance with the Rules of Procedure. I did however consider the Tenant's oral submissions and her relevant documentary evidence that was received with her application for Dispute Resolution.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. Following is a summary of the submissions 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 July 6, 2015, be upheld or cancelled?
2. If upheld what will be the effective date of an Order of Possession if granted to the Landlords?

#### Background and Evidence

##### **Undisputed Evidence**

The parties entered into a fixed term tenancy agreement that began on June 1, 2015 and is scheduled to end on June 1, 2016. Rent of \$725.00 was payable on the first of each month.

The Tenant was required to pay a security deposit of \$300.00. The parties entered into an oral mutual agreement that the Tenant would make monthly payments towards the security deposit of no less than \$50.00 per month until such time as the \$300.00 security deposit was paid in full. The Tenant made two payments which were applied to the security deposit. The first payment of \$50.00 was paid on June 12, 2015 and \$100.00 was paid on June 24, 2015 leaving a balance due for the security deposit of \$150.00. No payments have been made towards the security deposit since June 24, 2015.

At the time the tenancy agreement was entered into the Tenant had told the Landlords she had eight (8) dogs. When the Tenant moved into the rental unit she had eighteen (18) adult dogs, three (3) puppy litters totalling approximately 12 puppies; one parrot and three (3) cats.

On June 17, 2015 the Tenant began texting the male Landlord asking that he check on her dogs. The Tenant then began to text the female Landlord. The Landlords informed the Tenant that they were not her dog sitters and requested that she stop texting them. When both Landlords blocked her number the Tenant began calling their home landline to request that they check on her dogs.

On June 24, 2015 when the Tenant paid her June rent, she paid an additional \$100.00 and requested that the Landlords use the additional amount for an increased rent due to her increase in dogs. The Landlords refused the Tenant's offer as they knew that would be a breach of the *Act* and told the Tenant the money would be attributed to the security deposit.

### **Landlords' Submission**

The Landlords testified that shortly after they refused to look in on the Tenant's dogs when she was away, the Tenant began to yell foul language over the fence at them or at their guests when they were leaving. Despite their numerous verbal and written warnings the Tenant continued to yell obscenities at people on the street and at the Landlords.

The Landlords stated that the Tenant began to slander them on a public website and even posted their names and address. They said that they were later advised by the website manager that the Tenant was later banned from using the website.

The Landlords submitted that after they issued the Tenant three written warnings, June 30, 2015, July 2, 2015, and July 3, 2015, as submitted in their evidence, the Tenant's behaviour continued to be harassing. So on July 6, 2015 the Landlord personally served the Tenant with a 1 Month Notice to end tenancy for cause.

The 1 Month Notice was issued pursuant to Section 47(1) of the *Act* listing an effective date of August 30, 2015 for the following three reasons:

- Tenant or a person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonably disturbed 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
- Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement

### **Tenant's Submission**

The Tenant provided oral testimony which confirmed all of the items listed under the undisputed evidence above. Although she confirmed yelling at the Landlords and their guest, who she identified as the Landlord's sister, she asserted that those events were initiated by the Landlords' actions.

The Tenant confirmed that she had not paid money towards the security deposit since June 24, 2015 and argued that she withheld the payments because the relationship with her Landlords broke down. She has however, paid her rent in full up to September 30, 2015.

The Tenant submitted that she cannot stay living in the rental unit because the Landlords, who live next door, have a video camera pointed into her yard. She asserted that she no longer feels safe because she alleged the Landlords are entering her property when she is not there.

At this point of the hearing the parties were given the opportunity to settle these matters. However, the parties were too far apart and were not able to settle. As such, each party was given the opportunity to provide closing remarks.

The Landlords confirmed that they had installed a video camera on the exterior of their home as well as a dash camera in their vehicle. They argued that the cameras were for their own safety given the Tenant's outbursts.

The Tenant simply asserted that everything the Landlords said during the hearing were lies.

### Analysis

The *Residential Tenancy Act* (the *Act*), stipulates provisions relating to these matters as follows:

Section 47(1) of the *Act* provides, in part, that a landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies: (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement; (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, (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

Section 47(2) of the *Act* stipulates that a notice under this section must end the tenancy effective on a date that is not earlier than one month after the date the notice is received, and 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.

Section 47(3) of the *Act* provides that a notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 53(1) of the *Act* states, in part, that 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).

Section 53 subsection (2) of the *Act* provides that 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.

Section 55(3) of the *Act* stipulates that the director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

Section 72 (2)(b) provides that if the director orders a tenant to a dispute resolution proceeding to pay any amount to the landlord, including an amount under subsection (1), the amount may be deducted from any security deposit or pet damage deposit due to the tenant.

**After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:**

Upon review of the 1 Month Notice to End Tenancy, I find the Notice not to be completed in accordance with the requirements of the *Act* as it listed an incorrect effective date of August 30, 2015, pursuant to section 47(2) of the *Act*. That being said, the effective date would automatically correct to August 31, 2015, pursuant to section 53(2) of the *Act*. Accordingly, I conclude the Notice was of full force and effect.

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.

Regarding the first reason listed on the Notice to end tenancy:

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

The undisputed evidence was the Tenant had posted several comments about the Landlords on a group social media site. Those posts included slanderous comments against the Landlords and listed their names and addresses which potential tenants could see.

Based on the foregoing, I accept the Landlords' submissions that those internet posts significantly interfered with the Landlords as those posts could affect the Landlords' ability to secure new tenants.

In regards to the second reason listed on the Notice "the Tenant has engaged in illegal activity", I find the Landlords submitted insufficient evidence to prove the Tenant engaged in illegal activity. I make this conclusion in part as there have been no charges laid against the Tenant and no documentary evidence submitted that would prove the Tenant engaged in an illegal activity.

The undisputed evidence was the Tenant was required to pay \$300.00 as the security deposit. An oral agreement was entered into subsequent to the tenancy agreement whereby the parties agreed that the Tenant would make monthly payments of no less than \$50.00 per month towards the security deposit, until such time as the \$300.00 security deposit was paid in full.

The Tenant made no payments towards the security deposit on July 1, 2015 and on July 6, 2015 the 1 Month Notice was served upon the Tenant listing the third reason as being:

*Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement*

Based on the above, I conclude that the Tenant failed to make her next payment within the required 30 day period. Her previous payment was made on June 24, 2015 and she failed to make the minimum payment of \$50.00 that was due on July 1, 2015. In addition, there was evidence that no payments were made towards the security deposit on August 1 or on September 1, 2015.

Based on the totality of events and reasons listed above, I find there to be sufficient evidence to uphold the Notice to End Tenancy issued July 6, 2015. Accordingly, I dismiss the Tenant's application to cancel the 1 Month Notice.

The Tenant has not been successful with her application; therefore, I decline to award recovery of her filing fee.

The Tenant has paid to use and occupy the rental unit for the full month of September 2015. Therefore, I grant the Landlord's application and award them an Order of Possession effective **September 30, 2015**, pursuant to section 55(3) of the Act.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

### Conclusion

The Tenant was not successful and her application was dismissed.

The Landlord was successful with his application and was granted an Order of Possession effective September 30, 2015. The Landlord was awarded recovery of his \$50.00 filing fee.

The Landlord has been issued an Order of Possession effective **September 30, 2015 at 1:00 p.m. after service upon the Tenant.** In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

The Landlord may retain \$50.00 from the Tenant's security deposit as full satisfaction of the onetime award for full recovery of their filing fee, pursuant to section 72(2)(b) of 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 *Residential Tenancy Act*.

Dated: September 21, 2015

---

Residential Tenancy Branch



