



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

The Applicants (tenants) did not attend this hearing, although I waited until 1:45 p.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord's spouse, JM, attended this hearing, and was given a full opportunity to be heard, to present evidence and to make submissions.

JM testified that the landlord delivered the 1 Month Notice to End Tenancy for Cause ('1 Month Notice') to the tenants in person on January 1, 2017, with an effective date of February 1, 2017. The landlord entered into written evidence a copy of that Notice. At the hearing, the landlord requested an Order of Possession if the tenants' application for cancellation of 1 Month Notice was 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?

### Background and Evidence

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

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 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.*

The landlord issued the 1 Month Notice to the tenants on January 1, 2017 for the following reasons: "Tenant or a person permitted on the property has 1) significantly interfered with or unreasonably disturbed another occupant or the landlord 2) seriously jeopardized the health or safety or lawful right of another occupant or the landlord and 3) put the landlord's property at risk".

JM testified that the tenants and their guests would bang on all the exterior doors in middle of the night, and was found climbing the neighbour's fence. The landlord submitted evidence with letters from neighbours supporting the landlord's concerns.

### Analysis

**In the absence of any evidence or submissions from the applicants, I order the tenants' application dismissed without liberty to reapply.**

Section 53 of the *Act*, states 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) or (3), as applicable". In addition "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 53(3) of the *Act* states that "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". Accordingly the effective date on the 1 Month Notice is corrected to February 28, 2017.

Based on my decision to dismiss the tenants' application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected effective date of the 1 Month Notice February 28, 2017. I find the landlord's 1 Month Notice to be valid and complies with Section 52 of the *Act*. Accordingly the tenants, and any occupant on the premises, are required to vacate the premises by February 28, 2017. If this has not occurred, the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*.

### Conclusion

I dismiss the tenants' application for dispute resolution without leave to reapply. I find that the landlord's 1 Month Notice is valid and effective as of February 28, 2017.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenants. Should the tenants and any occupant of this original rental agreement 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: February 28, 2017

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Residential Tenancy Branch