



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNC CNL OLC FF

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' 2 Month Notice to End Tenancy for landlord's own use (the 2 Month Notice) pursuant to section 46;
- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

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. AL translated for the tenant in this hearing. JQ ('landlords') testified on behalf of both landlords in this hearing.

The landlords confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlords duly served with the tenant's Application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

During the hearing, the landlords brought to my attention that the 2 Month Notice to End Tenancy for Landlord's Own Use ('2 Month Notice'), dated February 15, 2017, was issued in error, and the landlords were cancelling the 2 Month Notice.

JQ testified that she had personally served the tenant with the 1 Month Notice on February 27, 2017. The tenant did not dispute the receipt of this notice. I find the tenant duly served with the 1 Month Notice, pursuant to section 88 of the *Act*.

### **Issues to be Decided**

Should the landlords' 1 Month Notice be cancelled?

If not, are the landlords entitled to an Order of Possession?

Is the tenant entitled to an order for the landlords to comply with the Act, regulation, or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlords?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

The landlords testified that there were several incidents involving the tenant including a physical altercation that had occurred between the tenant and a former tenant in February 2017. The landlords testified that the tenant was not able to live in the rental suite and get along with the other tenants who lived in the rental home. Aside from the loud talking and refusal to put garbage in the designated bins, the landlords testified that the tenant had often fought with other tenants, including the incident in February 2017 incident over the proper disposal of garbage in the correct bins. Both tenants were grabbing a snow shovel when the tenant WA slipped on the snow and the police and ambulance were called.

The landlords were also concerned as the tenant had plugged in a refrigerator in a vacant room that belonged to the landlords without the landlords' permission. The landlords also testified that the tenant had cut the branches off a tree on the property without the landlords' permission. The landlords submitted photos in evidence to support this.

The landlords also testified in the hearing that she believed the tenant was conducting business, and providing massage services to clients in his suite without the landlord's permission. The landlords submitted pictures in evidence to show that the tenant had a massage table in his suite.

The landlords submitted the notice to end tenancy providing two grounds:

1. the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlords; and
2. the 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.

The tenant did not dispute the fact that he cut the tree branches on the landlords' property, stating that the branches were blocking the entrance to his suite. The tenant also admitted to using the vacant room, stating that outlet in his suite was not working and he wanted to show the landlords that his refrigerator was in working order.

The tenant testified that the massage table in his suite was for personal use only, and that the landlords had taken pictures inside his suite without his knowledge and consent. The tenant testified that he had not done anything illegal, and requested the 1 Month Notice be cancelled as the landlords did not have sufficient grounds.

### **Analysis**

I find that the tenant was served with the Notice to End Tenancy, and I find that the 1 Month Notice does comply with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlords or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenant did not file for dispute resolution until March 10, 2017, eleven days later. I find that the tenant has failed to file his application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, March 31, 2017. In this case, this required the tenant and anyone on the premises to vacate the premises by March 31, 2017. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*.

As the tenancy has come to an end, I dismiss the tenant's application for an order for the landlords to comply with the *Act*, regulation, or tenancy agreement.

As the tenant was not successful in his application, I am now allowing the tenant's application for recovery of the filing fee.

### **Conclusion**

The landlords withdrew the 2 Month Notice dated February 15, 2017.

The tenant's application to cancel the landlords' 1 Month Notice **is dismissed**. I find that the landlords' 1 Month Notice is valid and effective as of March 31, 2017.

I grant an Order of Possession to the landlords effective two **days after service of this Order** on the tenant. Should the tenant 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

The tenant's application for recovery of the filing fee is dismissed.

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: April 26, 2017

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Residential Tenancy Branch