



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TRIUMPH MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC CNR RP

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 46; cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice") pursuant to section 47; and an order that the landlord make repairs to the rental unit pursuant to section 33.

The tenants/applicants did not attend this hearing, although I waited until 11:15 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord's representative attended the hearing and was given a full opportunity to be heard with respect to his reliance on a 1 Month Notice to end this tenancy.

The landlord confirmed that he received the tenants' Application for Dispute Resolution to cancel both the landlord's notices to end tenancy. The landlord testified that, prior to receipt of the tenants' application, he issued both a 10 Day and 1 Month Notice to End Tenancy. He testified that the 10 Day Notice was issued on November 27, 2017 however, since the issuance of that notice, rental arrears have been paid on the tenants' behalf. Therefore, the landlord no longer intends to rely on the 10 Day Notice to End the Tenancy. The landlord testified that he served a 1 Month Notice on November 27, 2017 in person as well. Based on all of the evidence provided, the tenants' application to dispute the 1 Month Notice and the undisputed nature of the landlord's testimony at this hearing, I find that the tenants were sufficiently served with the 1 Month Notice in accordance with the Act.

With respect to the tenant's failure to attend this hearing, Rule 7 of the Residential Tenancy Branch Rules of Procedure provides as follows:

7.1 ... The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 ...If a party or their agent fails to attend the hearing, the may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of the tenant's participation in this hearing to support his application and given the evidence provided at this hearing, **I order the tenant's application dismissed without liberty to reapply.**

#### Issue(s) to be Decided

As the tenants' application is dismissed, is the landlord entitled to an Order of Possession for the rental unit?

#### Background and Evidence

The landlord testified that this tenancy began on October 1, 2016 with a rental amount of \$850.00 due on the first of each month. The landlord testified that he continues to hold the tenants' \$425.00 security deposit paid at the outset of the tenancy. The landlord testified that the tenants continue to reside in the rental unit however they did not attend for their application to cancel the landlord's two notices to end tenancy.

The landlord issued a 1 Month Notice to End Tenancy for Cause to the tenants on November 27, 2017. A copy of that 1 Month Notice was submitted as evidence for this hearing. In that Notice, requiring the tenant to vacate the rental unit by December 3, 2017, the landlord cited the following reasons for the issuance of the Notice:

*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;*
- *put the landlord's property at significant risk.*

The landlord also listed as a reason to end the tenancy that the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property; adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; or jeopardize a lawful right or interest of another occupant or the landlord. The

landlord did not provide evidence with respect to illegal activity and, in his evidence to support the issuance of the Order of Possession, he relied strictly on the ground that the tenant significantly interfered with or unreasonably disturbed another occupant and that the tenant put the landlord's property at risk.

Providing brief evidence to support an Order of Possession, the landlord referred to a letter to the tenant dated November 17, 2017 submitted as evidence for this hearing. It read, in part, that the tenant has affected many occupants in the building by continuing flushing, plugging up and not taking steps to stop the overflow of the toilet. The landlord testified that the water from the ongoing toilet overflowing eventually leaked to all the units one floor below the tenant. The landlord testified that he has raised this issue with the tenant many times but that he doesn't listen.

The landlord testified that he received regular complaints about the noise from the rental unit from other occupants. This was also included in his letter to the tenant. The landlord testified that the police have been called to the unit on several occasions regarding noise complaints or other types of disputes at the rental unit. A notice to all tenants in the rental building dated November 18, 2017 indicates that the water for the building had to be turned off the day after the discovery of the leak from the tenant's unit to make repairs.

The landlord testified that most of the complaints and issues with the treatment of the rental unit have occurred within the last half of 2017.

### Analysis

Based on all of the testimony and evidence provided, I find the landlord has shown on a balance of probabilities that the tenant has both significantly interfered with or unreasonably disturbed another occupant or the landlord and put the landlord's property at significant risk. I accept the reasons provided by the landlord for the issuance of this notice and find that the landlord's notice complies with section 52 of the Act.

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 tenant made an application to cancel the landlord's 1 Month Notice to End Tenancy. Neither tenants attended to support their application. The landlord provided sufficient evidence to support his 1 Month Notice. I find that the 1 Month Notice submitted for this hearing complies with section 52 of the Act. I also find the 1 Month Notice would have been effective December 31, 2017. Therefore, as I have dismissed the tenants' application, **I find the landlord is, pursuant to section 55(1), entitled to an Order of Possession.**

#### Conclusion

I grant an Order of Possession to the landlord effective **two 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.

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 20, 2018

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Residential Tenancy Branch