



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Vista Reality LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC ERP MNDC OLC FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A participatory hearing, by teleconference, was held on July 17, 2018. The Tenants' applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided testimony. The Landlord confirmed receipt of the Tenants' application package. The Landlord also confirmed receipt of the Tenants' first evidence package on June 26, 2018. The Tenants stated they also provided two more evidence packages to the Landlord. The Tenants provided 131 pages of evidence, in person, to the Landlord on July 9, 2018. The Tenants also provided another evidence package on July 12, 2018, by putting the package through the Landlord's mail slot. The Landlord stated he did not have time to go through all of the Tenant's late evidence.

After considering this matter, and as discussed during the hearing, I find the Tenants' last two evidence packages, from July 9, 2018, and July 12, 2018, were not served in accordance with the rules of procedure. Residential Tenancy Branch Rule of Procedure 3.14 requires that evidence to be relied upon at a hearing must be received by the Residential Tenancy Branch and the respondent not less than 14 days before the hearing. Since the evidence is late and the Landlord did not have sufficient time to respond to the evidence, I will not consider the Tenant's late documentary evidence in this hearing. I find it would be prejudicial to the Landlord to allow such a large volume of late evidence to be admitted. The Tenant had to ensure the Landlord had received all of their evidence no later than July 3, 2018. This is done to ensure parties have sufficient time to understand and respond to the case against them.

The only evidence from the Tenants that will be considered in this review is their testimony and the first evidence package provided to the Landlord on June 26, 2018.

The Landlord testified that he served the Tenants his 21 pages of evidence by posting a copy to their door on July 6, 2018. The Tenants confirmed receipt of the Landlord's evidence but could not say exactly when they received it. Pursuant to section 88, and 90 of the Act, documents served in this manner are deemed served 3 days after they are posted to the door. I find this evidence was deemed served on July 9, 2018. I find the Landlord has sufficiently served the Tenants with his evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters

The Tenants applied for multiple remedies under the *Residential Tenancy Act* (the "Act"), some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues before me deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the Tenants' application with the exception of the following ground:

- to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice").

#### Issue(s) to be Decided

- Are the Tenants entitled to have the Landlord's Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Tenants acknowledged receiving the Notice on May 19, 2018. The Notice indicates the following reasons for ending the tenancy on the second page:

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 or a person permitted on the property by 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 Landlord issued the Notice for several reasons. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether there are sufficient grounds to end the tenancy. In other words, my decision will focus on the first ground identified by the Landlord, as this ground is what my decision hinges upon.

The Landlord testified that he manages this apartment complex and this Notice was issued largely because of an incident on May 12, 2018. The Landlord stated that he received complaints from others in the building that the Tenants of this rental unit were banging and hammering on their door. The Landlord stated that he went to investigate what was going on and saw two of the Tenants outside the rental unit. The Landlord stated that he asked the Tenants what was going on with the door and why they were making so much noise, and one of the Tenants, R.S., shook his fist and threatened the Landlord. The Landlord stated that shortly after this, R.S., punched him, and his son, M.H. started charging towards him, swinging his fists and elbows, and uttering threats at him. The Landlord stated that he started to yell for help at this point, and attracted the attention of others in the building.

As part of his evidence, the Landlord provided two witness statements. Notably, there was one person, named B.D., who stated that on May 12, 2018, around 8:45 pm, he heard the Landlord screaming for help and he peered off of his second floor balcony to see one of the Tenants, M.H., assaulting the Landlord. The witness, B.D., stated that he saw the Landlord frantically stepping back to avoid the repeated attempts to strike the

Landlord with his elbow. The witness stated that the Landlord kept backing up to keep a safe distance.

The Landlord stated that no one actually witnessed him get punched by one of the Tenants, R.S., and this is why the police were unable to offer much help when they arrived. The Landlord pointed out that the witness, B.D, only saw what happened after he was struck, which involved one of the other Tenants, W.H.

The Tenants stated that they had an issue with their sliding door, and that was part of the reason there was noise that required investigating by the Landlord. The Tenants stated that they were trying to fix the door when the Landlord arrived to investigate. The Tenants seemed to acknowledge that there was a verbal dispute that ensued, but deny that any physical assault happened. The Tenants stated that if there was a witness present, then the police would have pressed charges, and since no charges were pressed, this means that there was no assault and likely no witness. The Tenants referred to a police report, and stated that it showed that no charges were pressed.

### Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings with respect to whether there are sufficient grounds to end the tenancy.

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

The Landlord entered into written evidence a copy of the Notice. The first issue the Landlord identified on this Notice was:

*Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.*

I turn to the incident on May 12, 2018. The Tenants deny that any assault happened on May 12, 2018, the day the Tenants had a confrontation with the Landlord. The Landlord provided a contrasting version of events in which he states the two of the Tenants were hostile and threatening to him. The Landlord also provided a signed witness statement from B.D. corroborating what the Landlord has said on this matter and saying that he viewed most of the event from his second floor balcony.

I note these two versions of events are conflicting. However, I note the Landlord has provided detailed documentary evidence from at least one witness to substantiate his version of events. I find the Landlord has provided a more compelling version of events and I have placed more weight on it. I acknowledge that the witness did not see R.S. punch the Landlord. However, the witness provided a clear account of what he did see, which was the M.H. was swinging his elbows and fists and threatening the Landlord continually as the Landlord backed away in fear.

I find it more likely than not that the Tenant, M.H., threatened and pursued the Landlord in a physically threatening manner on May 12, 2018, even though he did not punch or contact the Landlord.

I find this behavior is unacceptable and I find there is sufficient evidence to show that one of the Tenants unreasonably disturbed the Landlord. As such, I find the Landlord has sufficient cause to issue the Notice. The Tenant's application to cancel the Notice is dismissed. The tenancy is ending, under the Notice, as described below.

Given my findings on this matter, it is not necessary to consider the other grounds listed on the Notice.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice complies with the requirements of form and content. I find the Landlord is entitled to an order of possession effective **July 31, 2018, at 1pm** after service on the Tenants.

### Conclusion

The Tenants' application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective **July 31, 2018, at 1pm** after service on the Tenants. If the Tenants fail to comply with this order the Landlord may

file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: July 18, 2018

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Residential Tenancy Branch