



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, OLC, FFT

### Introduction

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

- cancellation of the One Month Notice to End Tenancy (the "One Month Notice"), pursuant to section 47;
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement; and
- repayment of the filing fee pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that she personally served the landlord with the notice of dispute resolution package. The landlord confirmed receipt of the dispute resolution package on June 11, 2018. I find that the landlord was served with this package in accordance with section 89 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

### Issue(s) to be Decided

1. Is the tenant entitled to cancel the One Month Notice, pursuant to section 47 of the *Act*?
2. If the One Month Notice is not cancelled, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?
3. Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62 of the *Act*?
4. Is the tenant entitled to repayment of the filing fee pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in 2011 and is currently ongoing. Monthly rent in the amount of \$700.00 is payable on the first day of each month. A security deposit of \$330.00 was paid to the landlord. A written tenancy agreement was signed by both parties but a copy was not submitted for this application.

The landlord testified that on April 31st, 2018 she slipped the One Month Notice, with an effective date of May 31, 2018, under the tenant's door. The tenant confirmed receipt of the One Month Notice on May 31, 2018.

The tenant testified that she is seeking an Order that the landlord comply with the *Act* because the landlord did not properly serve her with the One Month Notice, pursuant to the *Act* and because the landlord breached her privacy by telling a different tenant that the tenant was being evicted before letting the tenant know.

The One Month Notice stated the following reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site.
- 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.
- 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;
  - Jeopardize a lawful right or interest of another occupant or the landlord.
- Tenant has caused extraordinary damage to the unit/site or property/park.

The landlord testified that since the tenant moved in, she has received numerous noise complaints regarding the tenant's children and the tenant's music. The landlord also testified that she has received numerous complaints regarding the tenant smoking marijuana at the entrance to the building and that there are signs all over the building stating that smoking near doorways is prohibited.

The landlord submitted into evidence several letters from the landlord to the tenant advising the tenant of the complaints made by other tenants and that eviction may result if the issues are not rectified. The landlord also submitted a complaint letter from another tenant in the same building.

The tenant testified that her children do not make an unreasonable amount of noise but that they are children and do make some noise during the day. The tenant testified that her children are in bed by 10 pm or 11 pm and so do not make noise during quiet hours. The tenant testified that she plays music in the morning but that this is not during quiet hours.

The tenant testified that she does smoke marijuana in front of the doorways; however, she has done this in front of the owner of the property on numerous occasions and he has never asked her to stop. The tenant also testified that lots of other tenants also smoke in front of the doorways.

Both parties agree on the following facts. On April 7, 2018, the tenant was in the apartment of another tenant in the building (the "second apartment"). The resident of the second apartment was not at home at that time and the tenant was using the balcony of the second apartment to smoke. The tenant later left the second apartment but left a cigarette butt which started a smoldering fire. The smoke alarm went off and the fire department was called. The fire department was able to put out the smoldering fire before it spread. Two carpet tiles were burned and the apartment suffered smoke damage.

#### Analysis

The landlord testified that she slipped the tenant the One Month Notice under the tenant's door. While this is not properly served, pursuant to section 88 of the *Act*, I find

that it is sufficiently served, pursuant to section 71 of the *Act*, because the tenant acknowledged receipt of the One Month Notice on April 31, 2018. I find that the One Month Notice conforms to the form and content requirements in section 52 of the *Act*.

Section 62 of the *Act* allows me to make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies. The tenant has testified that the landlord has breached her privacy by informing others of her impending eviction before herself. Privacy laws are under a different statute than the *Residential Tenancy Act*, as such, I do not have jurisdiction to hear or decide privacy complaints.

As I have found that the One Month Notice was sufficiently served for the purposes of the *Act* and that I do not have jurisdiction to hear privacy complaints, I dismiss the tenant's application for an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62 of the *Act*.

Section 47(1)(d)(iii) states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant has put the landlord's property at significant risk.

In this case, the tenant left an ignited cigarette butt inside the landlord's property. The cigarette butt in question caused a smoldering fire which could have caused a more significant fire. While the fire department was successful in putting out the smoldering fire before significant damage occurred to the property, I find that the negligent action of the tenant, leaving a lit cigarette butt inside a rental property, put the landlord's property at significant risk.

I find that the tenant has breached section 47(1)(d)(iii) and that the One Month Notice issued by the landlord is upheld. Given my above finding, I find that I do not need to consider the other grounds for eviction listed on the One Month Notice.

As the tenant was not successful in her application, she is not entitled to repayment of the filing fee from the landlord.

### Conclusion

I dismiss the tenant's application without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant 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: July 06, 2018

---

Residential Tenancy Branch