



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      CNC, OLC

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated June 11, 2018 ("1 Month Notice"), pursuant to section 47; and
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62.

The two tenants, tenant MD ("tenant") and "tenant AD" did not attend this hearing, which lasted approximately 20 minutes. The landlord's two agents, landlord AH ("landlord") and "landlord EJ" 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 landlord confirmed that he was the property manager and that landlord EJ was the rental building manager and that both had permission to speak on behalf of the landlord company named in this application, as agents at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution and notice of hearing. The landlord said that he did not receive a written evidence package from the tenants. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and notice of hearing.

The landlord confirmed that the tenant was personally served with two copies of the landlord's written evidence package on August 3, 2018. In accordance with section 88 of the *Act*, I find that both tenants were served with the landlord's written evidence package on August 3, 2018.

The landlord testified that the tenants were served with the landlord's 1 Month Notice on June 11, 2018, by way of posting to their rental unit door. The notice indicates an effective move-out date of July 31, 2018. In accordance with section 88 of the *Act*, I find

that both tenants were deemed served with the landlord's 1 Month Notice on June 14, 2018, three days after its posting. The landlord provided a signed witnessed proof of service with its written evidence package. In their application, the tenants indicated that they received the 1 Month Notice on June 11, 2018, by way of posting to their rental unit door. The tenants provided a copy of the notice with their application.

### Preliminary Issue – Dismissal of Tenants' Application

Rule 7.3 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* provides as follows:

*7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator 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 any evidence or submissions from the tenants, I order the tenants' entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenants' application to cancel a 1 Month Notice, the landlord is entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

### Issues 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

The landlord testified regarding the following facts. This tenancy began on June 1, 2001 and continues on a month-to-month basis. Monthly rent in the current amount of \$711.00 is payable on the first day of each month. A security deposit of \$275.00 was paid by the tenants and the landlord continues to retain this deposit. Both parties signed a written tenancy agreement and a copy was provided for this hearing.

The landlord issued the 1 Month Notice for the following reasons:

- *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 or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:*
  - *jeopardize a lawful right or interest of another occupant or the landlord.*

The landlord testified that the 1 Month Notice was issued to the tenants because landlord EJ was personally threatened with physical violence by the tenant on June 6, 2018. He stated this reason in the 1 Month Notice details but said that he mistakenly indicated the wrong date of June 7, 2018.

Landlord EJ testified that the tenant swore and yelled at him on the phone on June 6, 2018. He said that the tenant invited him to come to the rental building so that he could crack his skull. He stated that he reported it to the landlord and then to the police. He claimed that he filed a police report and the police asked him if he wanted to press charges for assault but he chose not to because he felt bad to do that to the tenant. He said that he did not feel it was assault but still felt threatened. He stated that he believed that the police officer came to the rental building and spoke with the tenant about the incident. He maintained that he avoids the area of the building where the tenants reside because he feels unsafe and threatened by the tenant and that it has affected his job with the landlord.

### Analysis

According to subsection 47(4) of the *Act*, tenants may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenants received the notice. The tenants were deemed to have received the 1 Month Notice on June 14, 2018, and filed this application to dispute it on June 20, 2018. Therefore, they are within the time limit under the *Act*. However, they did not appear at this hearing in order to present their case.

On a balance of probabilities and for the reasons stated below, I find that the landlord issued the 1 Month Notice for a valid reason since I find that the tenant significantly interfered with and unreasonably disturbed the landlord's agent. Since I have found one of the reasons on the notice to be valid, I do not need to examine the other reasons. I accept the testimony of landlord EJ who confirmed that the tenant threatened him with physical violence, landlord EJ filed a police report, and he feels unsafe and threatened

by the tenant such that it has affected his job and he avoids the area of the rental building where the tenants reside.

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.*

As noted above, I dismissed the tenants' application. I find that the landlord's 1 Month Notice complies with section 52 of the *Act*. Accordingly, I find that this tenancy ends at 1:00 p.m. on August 31, 2018, as the landlord confirmed during the hearing that the tenants paid rent for August 2018 to the landlord, so they are entitled to possession of the unit for the entire month. Therefore, I find that the landlord is entitled to an Order of Possession effective at 1:00 p.m. on August 31, 2018.

### Conclusion

The tenants' entire application is dismissed without leave to reapply.

I grant an **Order of Possession to the landlord effective at 1:00 p.m. on August 31, 2018**. Should the tenant(s) or anyone on the premises 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: August 16, 2018

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Residential Tenancy Branch