



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NANAIMO AFFORDABLE HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            CNC, AAT, LRE, OLC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) dated August 30, 2018, to request an order to allow access for the Tenant or their guest to the rental unit, to request an order restricting the Landlord’s right to enter the rental unit, and to request an order for the Landlord to comply with the *Act* or the tenancy agreement. The matter was set for conference call.

Both the Landlord and the Tenant’s Representative attended the hearing and were each affirmed to be truthful in their testimony. They were both provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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 is described in this Decision.

### Preliminary Matter

During the hearing, it became clear that there was an unidentified party in attendance with the Tenant’s Representative. When asked by this arbitrator the party introduced themselves, their name is recorded on the style of cause page of this decision, but they would not state what their purpose was to be in attendance during this hearing and would not agree to be sworn in. This arbitrator asked the party to leave, and the party agreed. However, it became clear at the end of this hearing that the party had not left as agreed.

### Issues to be Decided

- Should the Notice issued on August 30, 2018, be cancelled pursuant to section 47 of the Act?
- If not, is the Landlord entitled to an order of possession pursuant to section 55 of the Act?
- Is the Tenant entitled to an Order to allow access for the Tenant or their guest to the rental unit?
- Is the Tenant entitled to an Order restricting the Landlord's right to enter the rental unit?
- Is the Tenant entitled to an Order for the Landlord to comply with the *Act* or the tenancy agreement?

### Background and Evidence

The parties testified that the tenancy began on August 1, 2018, and that this rental unit is a subsidized unit, with the Tenant currently paying rent in the amount of \$350.00. The parties also agreed that at the outset of the tenancy, the Tenant paid a \$450.00 security deposit. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that she served the Notice to end tenancy to the Tenant on August 30, 2018, by posting it to the Tenant's door. The Property Manager provided a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- 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*
- *Tenant or 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 or the Landlord*
  - *Jeopardize a lawful right or interest of another occupant or the Landlord*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so*

The Notice states that the Tenant must move out of the rental unit by September 30, 2018. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Tenant has been causing problems at the rental property and that she has been spoken many times regarding her behaviour, and her son's behaviour.

The Landlord testified that she had received numerous verbal and nine separate written complaints regarding the Tenant, and the Tenant's guest behaviour throughout the rental complex. The Landlord testified the Tenants neighbours are concerned for their safety and that the RCMP have been called to the rental property several times due to the Tenant and her guest's aggressive behaviour. The Property Manager provided nine letters of complaint regarding the Tenant and a copy of the written warning issued to the tenant into documentary evidence.

The Landlord testified that the Tenant had allowed her guests to through garbage on to the property of other rental units as well as in common areas. That the Tenant has allowed her guests to let their dog run around the rental complex unattended and that the dog has charge aggressively towards other occupants of the rental complex. The Landlord also testified that the Tenant has allowed her guests to park on the road or on the grass, which has lead to traffic issues in and around the rental complex.

The Landlord also testified that the Tenant has blocked off common areas around her property for personal use, including the sidewalk in front of her rental unit and the paved area on the east side of the building. The Landlord testified that this has created a fire hazard and removed access to common areas that should be open to all occupants of the rental complex. The Landlord provided 35 pictures of the Tenant's rental unit and surrounding area into documentary evidence.

Additionally, the Landlord testified that she had received several complaints that the Tenant has been yelling and swearing at her neighbours in the rental complex. The Landlord testified that one of the letters she provided into documentary evidence was from the onsite Property Manager, in which he explains the behaviour he has witnessed from the Tenant and her guests, and how that behaviour has created an extremely stressful, unfriendly and unsafe environment throughout the rental complex.

The Tenant's representative testified that he believes that the people who have submitted complaints regarding the Tenant are just picking on her and her family. When asked the Tenants representative testified that all of the things that the Landlord state in her claim did in fact happen, but that the matters were trivial and that the people who are complaining about the Tenant should just talk to the Tenant to resolve the problems. The Tenants representative testified that these complaints are between the Tenant and her neighbours and should not involve the Landlord or the Tenant's tenancy and that the Tenant has the right to do what she is doing.

The Landlord testified that the other occupants of the rental complex have attempted to speak to the Tenant to work things out with her, but that the Tenant has been incorporative. The Landlord

testified that the Tenant's response when confronted with these issues, has been to state that it is her son that has caused the problems, not her and that she is not able to control him.

The Landlord testified that she issued a written warning to the Tenant on August 15, 2018, advising the Tenant that she was in breach of her tenancy agreement due to her and her guest's behaviour and that any further breach would result in a termination of her tenancy.

The Landlord testified that she received another complaint regarding the Tenant and her guest's behaviour on August 28, 2018, and that she issued the Notice to end the tenancy after received that complaint.

The Tenant's representative testified that the rental complex is subsidized housing for people with mental health issues and that the Landlord should expect that there would be disagreement between the occupants and should not be attempting to end one person's tenancy due to complaints.

The Landlord testified that the rental units in this complex are in fact subsidized; however, they are not specifically reserved for individuals with mental health issues but that they are assigned based on individual economic circumstances.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant was deemed to have received the Notice, three days after it was posted to the front door of the rental unit, on September 2, 2018, pursuant to the deeming provisions stipulated in section 90 of the *Act*.

Section 47 of the *Act* states the following:

#### **Landlord's notice: cause**

47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Pursuant to section 47, I find the Tenant had until September 12, 2018, to file her application to dispute this Notice. I have reviewed the Tenant application for dispute resolution, and I find that the Tenant filed her application on September 7, 2018, within the legislated timeline.

I have carefully reviewed the testimony of the parties and the documentary evidence that I have before me in this case. I find the written complaints from the neighbours of the Tenant to be a credible account of the disturbance caused by the Tenant and her guests on the rental property. I also find that the other occupants of the rental property would have been disturbed by the actions and behaviour of the Tenant and her guests.

For the reasons stated above, I find that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. Therefore, I dismiss the Tenant's application to cancel the Notice issued on August 30, 2018.

I find the Notice dated August 30, 2018, is valid and enforceable. I also find that based on the dated that the Tenant was deemed to have received this Notice, the earliest date that this tenancy could end in accordance with the *Act*, is October 31, 2018.

Section 55(1) of the Act states:

**Order of possession for the landlord**

- 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.

I have reviewed the Notice to end tenancy, and I find the Notice complies with section 52 of the *Act*. As I have dismissed the Tenant's application, pursuant to section 55 of the *Act*, I must grant the Landlord an order of possession to the rental unit.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective not later than 1:00 p.m. on October 31, 2018. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

As this tenancy is ending in accordance with the Notice, I find that there is no need to address the Tenant's additional claims. I dismiss the Tenant's claims for an order for the Landlord to comply with the Act, for an order to restrict the Landlord's access to the rental unit, and for an order to allow access for the Tenant or their guest to the rental unit.

Conclusion

The Tenant's application to cancel the Notice, issued on August 30, 2018, is dismissed. I find the Notice is valid and complies with the *Act*.

I also dismiss the Tenant's claims for an order for the Landlord to comply with the Act, an order to restrict the Landlord's access to the rental unit, and an order to allow access for the Tenant to the rental unit.

I grant an **Order of Possession** to the Landlord, effective not later than 1:00 p.m. on **October 31, 2018**. 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: October 26, 2018

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Residential Tenancy Branch