



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC DRI OLC RP

### Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*;
- dispute of a rent increase pursuant to section 41 of the *Act*;
- an Order for the landlord to provide services or facilities required by the tenancy agreement pursuant to section 62 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

The landlord, who was the respondent in this matter, appeared at the date and time set for the hearing of this matter. The tenant, who was the applicant in this matter, did not attend this hearing, although I left the teleconference hearing connection open until 10:27 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

Rules 7.3 and 7.4 of the 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 reapply.

**7.4 Evidence must be presented** - Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

I find that in accordance with the principles of natural justice and Rule 7.4, I will not consider any written submissions from the tenant in this matter as the tenant not did attend the hearing in order to present the evidence for cross-examination by the other party.

Therefore, in the absence of the tenant's attendance at this hearing, and in the absence of considering any of the tenant's written submissions, I order the tenant's application in its entirety dismissed without liberty to reapply.

#### Procedural Matters

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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession on the basis of the Notice to End Tenancy?

#### Background and Evidence

A written tenancy agreement was submitted into evidence by the landlord. The landlord confirmed the following terms of the tenancy agreement:

- This month-to-month tenancy began on June 15, 2018.
- Monthly rent of \$450.00 is payable on the 15<sup>th</sup> day of the month.
- A security deposit of \$225.00 was paid by the tenant on June 14, 2018 and continues to be held by the landlord.

The landlord provided unchallenged affirmed testimony that on July 21, 2018, the landlord attempted to serve the tenant in person with the One Month Notice dated July 21, 2018. The landlord testified that the tenant slammed the door and refused to accept

the notice. The landlord testified that another occupant who resides in the ground level rental property that is shared with the tenant signed a witness statement to the attempted service and assisted the landlord by leaving the One Month Notice in front of the tenant's door, which is inside the ground level rental property.

The One Month Notice, submitted into evidence by both the landlord and the tenant, states an effective move-out date of September 15, 2018, with the following boxes checked off as the reasons for seeking an end to this tenancy:

*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.*

The "Details of Cause" section of the notice refers to four pages attached, in which the landlord elaborates on the reasons for issuing the One Month Notice, including concerns raised by the other occupants of the ground level rental property pertaining to their personal safety and the security of their belongings. The landlord also provided undisputed verbal testimony regarding a physical altercation involving the tenant in which the tenant attempted to physically assault the other occupants of the ground level rental property by kicking and punching at them, and then threw a bucket at the occupants. The landlord testified that police were called to attend but by the time the officers arrived, the tenant had already left the rental property. The landlord stated that the tenant was later arrested by police in a nearby city for damaging property and causing a disturbance.

The landlord further testified that the police have been in contact with her and the other ground level rental property occupants regarding the tenant. Recently, the tenant was arrested by police while outside of the rental unit on the rental property grounds, and taken into custody. The landlord testified that a number of officers were required to subdue the tenant in order to take him into custody.

### Analysis

Section 55 of the *Act* provides that:

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.

In this case, I have dismissed the tenant's application in its entirety, without leave to reapply, as the tenant failed to attend the hearing to present his evidence.

Section 52 of the *Act* provides that:

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
  - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
  - (e) when given by a landlord, be in the approved form.

In the matter at hand, both parties submitted a copy of the One Month Notice into evidence. Therefore, given the fact that the tenant possessed a copy of the One Month Notice, and that he filed an application to dispute the notice, I find that the tenant was sufficiently served with the notice pursuant to section 71(2)(c) of the *Act*.

I find that the One Month Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end. I accept the landlord's undisputed evidence that the tenant has significantly interfered with other occupants of the rental property and seriously jeopardized the health and safety of other occupants.

Accordingly, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after being served upon the tenant.

Conclusion

The tenant's application is dismissed in its entirety, without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant 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: September 21, 2018

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Residential Tenancy Branch