



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC PSF OLC

### 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*;
- an order that the landlord provide services or facilities required by the tenancy agreement or the *Act* pursuant to section 62 of the *Act*; and
- an order for the landlord to comply with the *Act*, regulations or tenancy agreement pursuant to section 62 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The non-profit housing provider landlord was represented by its agent A.M. herein referred to as "the landlord".

As both parties were present, service of documents was confirmed. The tenant testified that he had personally served the landlord with the notice of this hearing on November 29, 2018, which was confirmed received by the landlord. Therefore, I find that the landlord was served with the tenant's notice of dispute for this hearing in accordance with section 89 of the *Act*.

The tenant served his evidence, approximately 13 pages, to the landlord late. The landlord confirmed receipt of the tenant's evidence on January 4, 2019, only six days before this hearing date. The landlord testified that they had reviewed the tenant's evidence sufficiently to proceed with the hearing. As such, I find that the landlord was sufficiently served with the tenant's evidence in accordance with section 71(2)(b) of the *Act*.

The landlord personally served the tenant with their evidence, approximately 188 pages, on December 18, 2018, which was confirmed received by the tenant. Therefore, I find the tenant was served with the landlord's documentary evidence in accordance with section 88 of the *Act*.

The landlord testified that they had also served the tenant with digital evidence pertaining to a video. The tenant testified that he did not have access to computer equipment to review the video evidence. The landlord testified that they did not complete the Residential Tenancy Branch "Digital Evidence Details" form (#RTB-43), which requires a party serving digital evidence to confirm in advance of the hearing that the recipient of the digital evidence was able to gain access to the digital evidence to "see/hear" the evidence on the digital device. This requirement is set out in Rule 3.10.5 "Confirmation of Access to Digital Evidence" of the Residential Tenancy Branch Rules of Procedure.

As the landlord failed to follow the digital evidence procedures, I advised the parties that I would not be considering the landlord's submitted video evidence, however the landlord was permitted to provide verbal testimony regarding the content of the video.

#### Preliminary Issue – Amendment of Tenant's Application

In addition to the tenant's application to cancel the landlord's One Month Notice, the tenant also included claims requesting an order for the provision of a service or facility and an order for the landlord to comply. The tenant provided no explanation, details or evidence pertaining to the nature of these claims. Further, I find these claims unrelated to the priority issue of the hearing, which is the determination of whether the landlord's One Month Notice should be cancelled. Therefore, pursuant to my authority under section 64(3)(c) of the *Act*, I advised the tenant that I was dismissing the claims unrelated to his priority claim to cancel the One Month Notice, with leave to reapply.

I note an error on the tenant's application pertaining to the dispute address as "Street" whereas on the One Month Notice the address is correctly noted as "Avenue". Therefore, pursuant to my authority under section 64(3)(c) of the *Act*, I corrected the tenant's application to reflect the correct dispute address.

#### Preliminary Issue - Procedural Matters

I explained to the parties 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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

#### Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? And if not, is the landlord entitled to an Order of Possession?

#### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

No written tenancy agreement was submitted into evidence by either party, however both parties confirmed a tenancy existed and confirmed the following terms of the tenancy:

- This month-to-month tenancy began on March 15, 2018.
- Monthly rent of \$460.00 is paid directly on behalf of the tenant through disability assistance.
- The tenant receives meals and medications as part of the program agreement.
- A security deposit was not required to be paid by the tenant at the beginning of the tenancy.

The tenant submitted into evidence a prior arbitration decision dated September 13, 2018. The tenant previously applied for dispute resolution against the landlord out of concerns that the landlord was going to unilaterally decide to end the tenancy agreement with the tenant. The landlord claimed that the program agreement between the parties met the definition of "transitional" housing and therefore was not subject to

the provisions for ending a tenancy required under the *Act*. The Arbitrator found that although the landlord is a non-profit housing provider, which also offers meals and medications to the residents of the rental property, the agreement between the parties constituted a tenancy agreement under the *Act*. Therefore, in this matter, my consideration are based on the fact that both parties are subject to their respective rights and responsibilities under the *Act*.

A copy of the One Month Notice dated November 19, 2018, submitted into evidence, states an effective move-out date of December 31, 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 (check all boxes that apply):*

- *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 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.*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

The landlord has provided the following details in the “Details of Cause” section of the notice:

*Tenant has repeatedly been both verbally and physically aggressive with staff/tenants/guests of the building. Police have been called on at least (1) Incident VA18233483.*

*Staff/tenants/guests have expressed their fear of tenant and ongoing aggression towards them.*

The landlord testified that the One Month Notice was personally served to the tenant on November 19, 2018, which was confirmed received by the tenant.

The tenant filed an Application for Dispute Resolution on November 29, 2018 to dispute the Notice.

The landlord claimed that the tenant had physically assaulted a guest of another tenant, and that the tenant's repeated verbal aggression towards staff and other tenants had resulted in frequent police attendance at the building. In support of her testimony, the landlord referred to several specific incidents outlined in the incident report submissions and warning letters to the tenant contained in the landlord's documentary evidence.

The tenant acknowledged that he struggles with anxiety, and that his loud verbal outbursts involving staff have usually pertained to situations around getting his medication from staff and him yelling at staff to call the police. The tenant testified that the majority of the time police have attended as a result of a verbal altercation involving the tenant, it is because the tenant has asked to call the police, and that only on a couple of occasions did the police attend because someone else called police.

The landlord testified in reference to an incident in which the tenant had physically assaulted a guest of another tenant by shoving him out of an elevator as he tried to step in. The incident was reported to staff. The landlord explained that the guest did not want to press charges as he was afraid, therefore police were not called. The landlord confirmed that the person was not injured, but shaken and upset from the incident.

In response, the tenant first stated that the incident never happened, but then went on to explain that it was not a physical assault, but rather a friendly slap on the back. The tenant testified that he knew the guest from "the street" and that he did not intend to cause the guest to fall forward but acknowledged that he may have slapped him a bit too hard on the back. The tenant testified that he did not know the guest had just recently had surgery and believes the guest lost his balance from being slapped on the back.

The landlord testified in reference to an incident in which the tenant was verbally aggressive to staff and physically threatening as he pushed materials off the staff reception desk, leaned across the desk and then held the telephone on the desk in a threatening manner while yelling at staff to call the police. Police attended and spoke with the tenant, but no charges were laid.

The tenant testified that this was a situation where staff refused to give him his medications for anxiety. The tenant acknowledged that he had a verbal outburst at staff and yelled at them to call police as he needed his medication. He confirmed police spoke with him but there were no charges laid.

The landlord testified there was a prior incident, similar to the one noted above, involving the tenant becoming verbally aggressive and threatening to staff when staff refused to provide the tenant with his medications for the next day as the tenant was planning to be away overnight. The landlord explained that future medication doses are not provided to a tenant unless it has been arranged in advance in consultation with the tenant's doctor. Police were called, and the tenant was spoken to by police, but no charges were laid.

The tenant testified that again, he was verbally loud as he was yelling to get the police called. He was upset that staff refused to provide him with his medications. The tenant confirmed that police spoke with him, but no charges were laid.

The landlord testified that there was an incident involving a female occupant of the building, herein referred to as "C.C.". Police were called due to concerns that the tenant was harassing C.C. outside the building and had taken her cell phone. Police spoke with C.C. and the tenant. No charges were laid.

The tenant explained that he and C.C. were out grocery shopping, and on the way back to the building they got into a loud verbal argument. The tenant testified that a concerned citizen called police as a result of overhearing the tenant and C.C. arguing. The tenant explained that C.C.'s phone had accidentally ended up in the tenant's grocery bag, and that he later returned C.C.'s cell phone. He confirmed that on this occasion he was not the one who contacted the police, that he spoke with police and that no charges were laid.

The tenant called C.C. as a witness to provide her testimony during the hearing. The tenant submitted into documentary evidence a four-page written statement from C.C.

Although I gave specific instructions to the tenant to put the telephone on speaker or to hold the phone between both him and C.C. so that he would be able to hear the questions asked by the landlord of C.C. and her responses, C.C. testified that during a portion of her testimony the tenant was not present. The tenant stated that the phone did not have a speaker function, and that he was standing within earshot although he did leave the area to get a tissue at some point during C.C.'s testimony. C.C. stated that she only felt comfortable providing some of her testimony when the tenant was not present.

I find witness C.C.'s verbal testimony to be unreliable as the witness would not provide her testimony in the presence of the tenant, and the tenant was not present for all of C.C.'s testimony.

For these reasons, I find that it would be prejudicial to the tenant to consider witness C.C.'s verbal testimony, and therefore, I have not considered C.C.'s verbal testimony in making a determination in this matter.

However, I find that it would not be prejudicial to consider only witness C.C.'s written statement which was submitted into evidence by the tenant, for my consideration in this matter. Therefore, I have considered only C.C.'s written statement. I note in C.C.'s written statement she stated that the tenant "has anxiety and that when he gets confronted by issues he occasionally gets verbally loud as a vent for his frustration and anxiety." C.C.'s written statement also explains that in her opinion, the tenant's "confrontations with staff" are a result of the tenant being provoked and intimidated by staff.

I note that the landlord failed to call any witnesses to support her testimony, all of which was based on second-hand information provided to her by staff. I also note that the landlord redacted the names of the staff referenced in the incident reports submitted into evidence.

Prior to concluding the hearing, I provided the parties an opportunity to try to come to a resolution of their dispute through a settlement, however, the parties were unable to find a mutually agreeable solution. Therefore, an arbitrated decision was made in this matter in accordance with the *Act*.

### Analysis

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

The tenant was in receipt of the landlord's One Month Notice on November 19, 2018. The tenant filed an application to dispute the notice on November 29, 2018, which is within ten days of receipt of the notice. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden, on a balance of probabilities, to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

After reviewing the One Month Notice submitted into evidence, I find that the Notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord; provides the address of the rental unit; states the effective date of the notice; and explains the grounds for the tenancy to end.

In this matter, I find that I cannot consider the verbal testimony of the tenant's witness as I find it prejudicial to the tenant as he was not present for all of her testimony, and she would not provide all of her testimony in the presence of the tenant. I find that the landlord's testimony was based on second-hand information provided to her by staff, whom she failed to call as witnesses to provide first-hand testimony.

Therefore, I find that I prefer the tenant's verbal testimony in this matter, as it is a first-hand account. As well, I have considered the tenant's documentary evidence which includes witness C.C.'s written statement, and the documentary evidence submitted by the landlord which was confirmed received by the tenant and available for the tenant to cross-examine.

In the tenant's own words during the hearing, he confirmed that police have been called to the building on several occasions, usually as a result of the tenant becoming verbally loud at staff and telling them to call police. The tenant did acknowledge that on a couple of occasions either staff, or a member of the public in one instance, called police due to the tenant's loud verbal confrontation.

Given that no charges were laid in any of these instances, I do not find that the mere attendance of police at the rental property can be considered to meet the threshold for ending the tenancy based on illegal activity.

However, I do find that the repeated and ongoing attendance by police at the rental property due to confrontations between the tenant and the landlord's staff or other occupants does meet the threshold for ending the tenancy based on unreasonable disturbance. I find that the nature and frequency of these disturbances are not ones that could reasonably be expected to be endured by occupants or landlord's staff in a rental complex.



The tenant's perspective is that he has been provoked by staff into confrontations, usually as a result of an issue pertaining to the tenant's medications. In a tenancy relationship, both parties have a responsibility to interact in a reasonable manner to discuss and resolve issues that arise. I find that the tenant's testimony that he is the one who has demanded police attendance the vast majority of the times speaks to the tenant's failure to interact in a reasonable manner, resulting in interactions with the tenant often escalating into a police-involved disturbance.

I also find the verbal argument between the tenant and C.C. in which the tenant testified that a member of the public called police, to meet the threshold of unreasonable disturbance. I find that the intensity of the verbal argument between the tenant and C.C. would have been of such significant concern that it prompted a member of the public to have called police due to concerns over what was heard. As the dispute spilled over into the rental property as result of the tenant having C.C.'s cell phone in his possession, staff were once again dealing with police to resolve the incident.

For the reasons provided, based on the evidence before me, on a balance of probabilities, I find that grounds for the landlord issuing the One Month Notice have been proven. Therefore, the One Month Notice is of full force and effect, and the tenant's application is dismissed without leave to reapply.

Section 55(1) of the *Act* states that if a tenant makes an application to dispute a notice the arbitrator must grant an Order of Possession if the notice complies with the *Act* and the tenant's application is dismissed. As I have made a finding that the One Month Notice complies with section 52 of the *Act* and the tenant's application to the cancel the One Month Notice is dismissed, the landlord must be granted an Order of Possession.

The effective vacancy date of the notice has now passed. However, as the tenant's rent is directly paid by disability, his rent for the month of January 2019 has already been received by the landlord. Therefore, this Order of Possession will be dated effective February 1, 2019 at 1:00 p.m. The landlord must service the Order of Possession on the tenant as soon as possible.

### Conclusion

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

I grant an Order of Possession to the landlord effective February 1, 2019 at 1:00 p.m. The landlord must serve this Order on the tenant as soon as possible. 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: January 21, 2019

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Residential Tenancy Branch