



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CITY OF VANCOUVER and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on February 6, 2019, (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- to cancel a One Month Notice to End Tenancy dated January 28, 2019 ("the One Month Notice").

The Tenant, the Landlord's counsel I.D., as well as the Landlord's Agents, R.N. and P.G., attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenant testified that he served his Application and documentary evidence package to the Landlord in person around February 6, 2019. I.D. confirmed receipt. I.D. testified that the Landlord served the Tenant with their documentary evidence in person on March 5, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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 are described in this Decision.

I note that Section 55 of the *Residential Tenancy Act* (*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*.

### Preliminary Matters

During the hearing, the Tenant raised the issue of jurisdiction as the Tenant stated that he has submitted a Notice of Civil Claim to the Supreme Court of Canada on February 5, 2019. The Tenant stated that his Application before the Residential Tenancy Branch is substantially linked to a matter that is currently before the Supreme Court. As such, the Applicant is seeking that I decline jurisdiction in the matter before me.

The Tenant indicated that the Notice of Civil Claim is in relation to the Landlord's policies surrounding room checks at the rental unit. The Tenant also indicated that he is disputing the truthfulness of the Landlord's allegations as well as the rights of the Tenant surrounding his recording of staff on the property. The Tenant stated that he does not yet have a court date relating to his Civil Claim.

In response, I.D. testified that the Tenant has not yet made an Application to the Supreme Court, therefore his Notice should not be considered as being before the Supreme Court.

Section 58(2)(C) of the *Act* confirms that a director must resolve a dispute unless the dispute is linked substantially to a matter that is before the Supreme Court.

In this case, I find that the Tenant has provided insufficient evidence to demonstrate that he has made an Application to the Supreme Court as he has not provided any documentary evidence indicating he has actually filed in the Supreme Court. Furthermore, I am not satisfied the matters that the Tenant refers to in his Notice of Civil Claim are substantially linked to the reasons for cause that the Landlord has outlined in the One Month Notice. Lastly, the questions of access to the rental unit for the tenant and guests, as well as his alleged conduct in recording events at the rental unit, are matters that are dealt with under the *Act*, and therefore, these is jurisdiction for these matters in this forum.

As a result, I find that the Residential Tenancy Branch has jurisdiction to hear the Tenant's Application.

### Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice dated January 28, 2019 pursuant to Section 47 of the *Act*?
2. If the Tenant is unsuccessful in cancelling the One Month Notice is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; the tenancy began on June 1, 2018. Rent in the amount of \$375.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$187.50. A copy of the tenancy agreement was submitted in support.

P.R. testified that the Landlord served the Tenant with the One Month Notice on January 28, 2019 with an effective vacancy date of February 28, 2019 by positing it on the Tenant's door. The Tenant confirmed having received the One Month Notice on the same day. The Landlord's reasons for ending the tenancy on the One Month Notice is;

*The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.*

P.R. testified that the Landlord is seeking to end the tenancy in relation to several incidents where the Tenant was verbally abusive towards staff. P.R. stated that the first incident took place on September 6, 2018 in which the Tenant was observed getting upset with a mail delivery person at the building. R.R. stated the Tenant began using profanity towards the mail delivery person. The Landlord submitted log notes in support.

P.R. stated that the Landlord sent the Tenant a caution notice regarding this behaviour on September 14, 2018. In response, the Tenant indicated that he become frustrated with the mail delivery person and acknowledged swearing at them.

A second incident was noted by P.R. in which the Tenant was observed recording staff on his phone while they were conducting room checks on January 6, 2019. The Landlord sent the Tenant a caution notice on January 7, 2019 requesting that he stop recording staff as they feel unsafe. The Landlord submitted log notes in support and the caution notice in support.

In response, the Tenant testified that he doesn't feel that the staff at the building should be permitted to conduct room checks and was therefore recording their routines. The Tenant stated that it is his right to record staff if he wishes to.

Lastly, R.N. testified that on January 28, 2019 he was conducting a room check at the Tenant's rental unit. After knocking on the door, he proceeded to enter the Tenant's rental unit at which point the Tenant came to the door and became verbal abusive towards R.N., calling him vulgar names and putting up his middle finger towards R.N. R.N. testified that he now scared of the Tenant and doesn't feel his behaviour is appropriate.

In response, the Tenant stated that he felt provoked as he doesn't like staff coming into his rental unit. The Tenant stated that he doesn't agree with the Landlord's policy surrounding room checks and suggested that staff call him prior to entering. The Tenant confirmed that he swore at R.N. The Tenant stated that his actions did not significantly interfere with or unreasonably disturbed another occupant or the Landlord.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a Landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause dated on January 28, 2019 with an effective vacancy date of February 28, 2019 by posting it on the Tenant's door. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

The landlord is seeking to end the tenancy on the basis that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. R.N and P.R. outlined two incidents in which the Tenant became upset with staff which resulted in the Tenant swearing at the staff members. R.N. also described a situation in which the Tenant was observed recording staff on his phone. The Tenant minimized the incidents; however, he acknowledged that he did swear at the staff after being provoked.

I find that while the Tenant's actions of swearing are inappropriate, I find that the Landlord provided insufficient evidence to demonstrate that the Tenant swearing and recording staff has significantly interfered with or unreasonably disturbed another occupant or the Landlord, to the extent that the tenancy should end.

Nevertheless, the Tenant is now warned that this behavior should not continue and that he should seek to calmly discuss his issues with the Landlord or their agents, rather than react in an inappropriate manner. Increased incidents of this type or any further escalation, may give the Landlord sufficient cause to end the tenancy.

In light of the above, I cancel the One Month Notice, dated January 28, 2019.

I order the tenancy to continue until ended in accordance with the Act.

### Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated January 28, 2019 is cancelled.

The tenancy will continue until ended in accordance with the Act.

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: March 21, 2019

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Residential Tenancy Branch