



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlords' application: OPC FFL  
Tenant's application: CNC MNDCT

### Introduction

This hearing dealt with an Application for Dispute Resolution ("application") by both parties seeking remedy under the *Residential Tenancy Act* ("Act"). The landlords applied to obtain an order of possession for cause and to recover the cost of the filing fee. The tenant applied to cancel the 1 Month Notice to End Tenancy for Cause dated August 20, 2019 ("1 Month Notice") and for a monetary claim of \$2,491.96 for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant and the landlords attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence. I find the parties were sufficiently served as a result.

### Preliminary and Procedural Matters

Section 2.3 of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules") authorizes me to sever unrelated items contained in one application. The tenant indicated two matters of dispute on their application, one monetary and one related to cancelling the 1 Month Notice. I find the two matters on the tenant's application are not sufficiently related. Therefore, I will deal with the tenant's request to set aside or cancel

the 1 Month Notice. I dismiss the balance of the tenant's application, with liberty to re-apply.

The parties confirmed their email addresses during the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties.

### Issues to be Decided

- Should the 1 Month Notice be cancelled or upheld?
- If it is upheld, are the landlord's entitled to an order of possession under the *Act*?
- Are the landlords entitled to the recovery of the cost of the filing fee?

### Background and Evidence

The parties agreed that a month to month verbal tenancy agreement was formed, which began on May 1, 2017. Currently, the parties agreed that rent is due on the first day of each month in the amount of \$595.00, plus utilities. The parties confirmed that the tenant paid a security deposit of \$300.00 at the start of the tenancy, which the landlords continue to hold.

The tenant confirmed that they were served with the 1 Month Notice on August 20, 2019. The tenant disputed the 1 Month Notice on August 29, 2019.

There are 3 causes listed on the 1 Month Notice, namely:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
3. 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.

The landlords testified that the tenant admitted to assaulting his previously landlord. The female landlord testified that on August 15, 2019, they were in the garden watering when the tenant asked about a chair. The landlord stated that the tenant became agitated and said "you are acting like a 13 year old girl" and was yelling and pointing at

her. The tenant denied raising their voice and claimed he was attacked by a neighbor, yet when the police arrived he was handcuffed.

The landlords referred to a witness statement submitted in evidence from CH. CH writes in part that they witness the tenant on August 15, 2019 and that the tenant was under the influence of alcohol and had invaded the landlord's personal space. Furthermore, CH writes that the tenant's body language became more aggressive the longer they spoke, and the tenant's voice rose. The letter also states that the landlord asked the tenant to leave and the tenant refused. CH indicates that he heard the landlord yell for help as the landlord was concerned about an assault. CH also described that they provided their statement to the RCMP who attended.

The tenant was asked if they had any response to what the landlord presented in evidence, and the tenant confirmed that they "had no response."

### Analysis

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

1 Month Notice – I find that I prefer the testimony and documentary evidence of the landlords over that of the tenant for four reasons. Firstly, the tenant did not deny that he previously assaulted his former landlord who the landlords described as a 78-year-old man. Secondly, I find it highly unlikely that the tenant did not raise his voice as the tenant claimed, given that both the female landlord and a witness support the landlord's version of events that the tenant did raise his voice and was yelling. Therefore, I find it reasonable that the female landlord feared for her safety, which prompted a call to the RCMP. Thirdly, the tenant admits that the RCMP attended and handcuffed them, and I find it more likely than not that being handcuffed by the RCMP was due to the tenant's behavior when the police arrived at the rental unit. Fourthly, when asked for their response to the landlord's evidence, the tenant replied that they "had no response."

Given the above, I find the landlords have met the burden of proof and have provided sufficient evidence to support that the 1 Month Notice is valid. I find the tenant has seriously jeopardized the health or safety or lawful right of the landlord. As a result, I dismiss the tenant's application without leave to reapply, due to insufficient evidence.

**Order of possession** – The effective vacancy date listed on the 1 Month Notice is September 30, 2019. Accordingly, I find the tenancy ends on September 30, 2019 at

1:00 p.m. The parties confirmed that the tenant has not paid any money for use and occupancy for October 2019. Accordingly, pursuant to section 55 of the *Act*, I grant the landlords an order of possession **effective September 30, 2019 at 1:00 p.m.**

The landlords are holding a security deposit of \$300.00, which was paid by the tenant at the start of the tenancy and has accrued no interest. As the landlords' claim was successful, I grant the landlords the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*. I authorize the landlords to retain 100.00 from the tenant's security deposit, in full satisfaction of the recovery of the landlords' filing fee, leaving the tenant's security deposit balance in the amount of \$200.00, effective immediately.

### Conclusion

The tenant's application is dismissed.

The landlords' application is fully successful. The tenancy shall end on September 30, 2019 at 1:00 p.m.

The landlords have been granted an order of possession effective September 30, 2019 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlords have been authorized to retain \$100.00 from the tenant's security deposit, in full satisfaction of the recovery of the landlords' filing fee. The tenant's new security deposit balance is \$200.00, effective immediately. This decision will be emailed to both parties. The order of possession will be emailed to the landlords only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 27, 2019

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Residential Tenancy Branch