



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, RP, AS, OLC, FFT

### Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32;
- an Order to allow as assignment or sublet when permission has been unreasonably denied, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present during the hearing, service of the landlord's notice of application for dispute resolution was confirmed, in accordance with section 89 of the *Act*.

### Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the One Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the One Month Notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy and recovery of the filing fee for this application.

### Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2017 in a one bedroom apartment. Two to three months after the tenant moved in he switched to a two bedroom apartment and currently continues to reside in the two bedroom apartment. Monthly rent in the amount of \$1,050.00 is payable on the first day of each month. A security deposit of \$525.00 was paid by the tenant to the landlord. A pet damage deposit in the amount of \$525.00 was paid by the tenant's ex-roommate to the landlord.

Both parties agree on the following facts. The tenant switched to the two-bedroom apartment because he wanted to get a roommate to share expenses with. The landlord agreed to allow the tenant to have a roommate but wanted to meet with the roommate prior to the roommate moving in. The landlord approved the tenant's choice of

roommate. Since the roommate had pets, the landlord asked for a pet damage deposit which was paid by the roommate to the landlord.

The landlord testified that he did not know what amount of money the tenant charged the roommate and that he received the full rent from the tenant. This testimony was not disputed by the tenant.

Both parties agree that sometime into the tenancy the tenant wanted to increase the rental rate he charged his roommate but the roommate did not want to pay more. The tenant then requested the landlord to help him get his roommate to pay more. The landlord testified that he informed the tenant that he had no authority to make the tenant's roommate pay more rent.

Both parties agree that the tenant and his roommate got into a number of disputes regarding what rent the roommate was to pay the tenant and the police were called on more than one occasion. Both parties agreed that the landlord informed the tenant and his roommate that if the disputes did not stop, he would evict both tenants. Both parties agreed that between June and August the tenant sent the landlord hundreds of texts regarding the tenant's belief that the landlord should help him raise his roommate's rent and later requesting various items be fixed in the subject rental property. The tenant entered into evidence 38 pages of the above text messages and the landlord entered into evidence a sampling of the text messages between the parties.

The landlord testified that the messages from the tenant were harassing and threatening in nature and he had to block the tenant's text messages and facebook messages due to the quantity and content of the messages. The landlord testified that the messages would come in at all hours of the day and night and threatened to contact his boss at his other non-landlord related job.

The following are a few excerpts from the text messages entered into evidence by the tenant:

- August 2, 2019-Tenant: Fix my god damn place this week or else
- August 21, 2019- Tenant: ...if your boss of the apartment cares about his property he will fire you when I'm done...
- August 21, 2019- Tenant: So you better have that letter of apology on my door by noon tomorrow or else you will be owing me lots of money cause I'll have your [landlord's other job] pay and more. And I'm not playing games with you the time is up

The following were excerpts entered into evidence by the landlord. The date of the messages is not shown on the screen shots. The landlord testified that they were messages sent between June and August of 2019. The above testimony was not disputed by the tenant.

- So you better back off and stop believing [the roommate] or I will let [landlord's other job] know all about you and how you treat people and that letter will go to the CEO not just a normal person
- You better not be kicking me out my mom said or else

Both parties agreed that the tenant also started texting the landlord's aunt, asking her to intervene with the landlord on his behalf. The tenant and the landlord's aunt had a pre-existing relationship outside of the landlord tenant relationship. The landlord testified that the text messages to his aunt were threatening and hurtful in nature. The following excerpts were entered into evidence:

- Get [the landlord] to back off right now or shit will hit the fan
- Mom want to sue you now she can't believe how much of a bitch you have come [sic] and how you changed for the worst
- So did you tell [landlord] to back off 6et [sic] or do I get a lawyer involved and I will go after you since your on [the landlord's] side and my mom will go after you too not playing games with you anymore you know I got disabilities and your action will cost you lots of money cause I will sue you if [the landlord] does not back ofg [sic]
- You have till Friday to get him to back off or else

The tenant testified that he would not have harassed the landlord with hundreds of text messages if the landlord would have helped him with his roommate and fixed the subject rental property. The tenant testified that he knew "he did wrong" but that he was frustrated when the landlord refused to help him get his roommate to pay more rent. The tenant argued that his roommate became a co-tenant when the roommate paid the landlord the pet deposit and so the landlord should have supported him in getting the

roommate to pay more in rent, even when the landlord did not raise the rent of the subject rental property.

The tenant testified that his roommate moved out in August of 2019.

The tenant testified that he believed that the landlord wants to evict him so that he can get a tenant in who pays higher rent. The landlord testified that he wants to evict the tenant because the tenant has sent threatening text messages to him and his aunt.

The tenant testified that the police told him to stop contacting the landlord's aunt and that he has agreed to stop contacting her.

The landlord testified that due to the volume of texts and their threatening nature, he served the tenant with a One Month Notice to End Tenancy for Cause with an effective date of September 30, 2019 (the "One Month Notice") via registered mail at the end of August 2019. The tenant confirmed receipt of the One Month Notice at the end of August 2019 and filed to dispute the One Month Notice on August 26, 2019.

The One Month Notice stated the following reasons for ending the 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;

### Analysis

I find that the tenant was served with the One Month Notice in accordance with section 88 of the *Act*.

Section 47(1)(d)(i) states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

I find that the content of the text messages sent by the tenant to the landlord and the landlord's aunt were threatening in nature and excessive in volume. I find that sending the landlord hundreds of text messages and contacting the landlord's aunt about the

tenancy significantly interfered with and unreasonably disturbed the landlord. Regardless of whether or not the landlord had an obligation to assist the tenant with his roommate or repairs to the subject rental property, the tenant's excessive threatening text messages breached section 47(1)(d)(i) of the *Act* and the landlord is therefore entitled to vacant possession of the subject rental property pursuant to section 55 of the *Act*.

As I have found that the landlord is entitled to vacant possession of the subject rental property under section 47(1)(d)(i) of the *Act*, I decline to consider if the landlord is entitled to vacant possession of the subject rental property under section 47(1)(d)(ii) of the *Act*.

As the tenant was not successful in his application, I find that he is not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. 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 29, 2019

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Residential Tenancy Branch