



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FAIRVIEW COURT HOLDINGS LTD./FIVE MILE HOLDINGS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            CNC, LRE, OLC

### 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 that the landlord's right to enter be suspended or restricted, pursuant to section 70; and
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;

The tenant, the property manager and the building manager 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 tenant's notice of application for dispute resolution was confirmed, in accordance with section 89 of the *Act*.

I note 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 Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with 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 One Month Notice to End Tenancy for Cause.

#### Issue 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. If the tenant's application is dismissed and the landlord's Notice to End Tenancy is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 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 April 1, 2019 and is currently ongoing. Monthly rent in the amount of \$1,350.00 is payable on the first day of each month. A security deposit of \$675.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The property manager testified that a One Month Notice to End Tenancy for Cause with an effective date of October 31, 2019 (the "One Month Notice") was put in the tenant's mailbox on September 27, 2019. The tenant confirmed receipt of the One Month Notice on September 27<sup>th</sup> or September 28<sup>th</sup>, 2019.

The tenant filed to dispute the One Month Notice on October 9, 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;
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

The building manager testified that he has received numerous complaints from other tenants about the tenant being verbally aggressive, noisy and smoking in the non smoking building. The complaints have been predominately from the tenant's neighbour who lives directly above him. The landlord entered into evidence the building manager's logbook which notes complaints lodged against the tenant on the following dates: July 17, 2019, August 6, 2019, August 7, 2019, September 16, 2019, September 19, 2019, and September 23, 2019.

The landlord entered into evidence five signed letters of complaint against the tenant from the neighbour living above the tenant. The building manager testified that the tenant has continuously harassed the elderly couple who lives above him by frequently banging on their door and leaving notes on their door. 17 notes left by the tenant on the neighbour's door were entered into evidence. The tenant confirmed that he left the notes on his neighbour's door.

The building manager testified that two warning letters dated September 16, 2019 which were entered into evidence, were put in the tenant's mailbox on September 16, 2019. The tenant confirmed receipt of the above letters on September 16, 2019. One letter informed the tenant that smoking in the subject rental property is a material breach of the tenancy agreement and that if the tenant does not stop smoking his tenancy may be terminated. The second letter informed the tenant that disruption of the quiet enjoyment of other tenants was a breach of his tenancy agreement and warned him that if he continues to disturb other occupants his tenancy may be terminated.

The building manager testified that the upstairs neighbours called the police on the tenant on September 23, 2019 after the tenant banged on their door. The building manager testified that the police attended and told the tenant not to approach his upstairs neighbours in the future.

The tenant testified that while he may have had heated exchanges with other tenants he was never aggressive and would never have become physically aggressive with other tenants of the subject rental building. The tenant testified that the tenants who complained against him have been aggressive towards him and that the only reason he keeps leaving notes on the upstairs neighbour's door is because their noise level keeps him up until 1 a.m. and wakes him up at 7 a.m. most mornings.

The tenant testified that his upstairs neighbours are constantly dragging heavy furniture around at night and loudly stomping on the way to the bathroom in the middle of the night. The tenant uploaded over 30 audio recordings in which he purports to record his upstairs neighbours being noisy. Upon review of the audio recordings at the time periods indicated by the tenant, I was not able to hear any of the alleged noises.

The tenant testified that he has not smoked in the subject rental property since he received the September 16, 2019 warning letter.

### Analysis

Based on the testimony of both parties and the evidence provided, I find that service of the One Month Notice was effected on the tenant by September 28, 2019, in accordance with section 88 of the *Act*.

Upon review of the One Month Notice, I find that it conforms to the form and content requirements of section 52 of the *Act*.

Section 47(4) and section 47(5) of the *Act* state that if a tenant who has received a One Month Notice does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

In this case, the tenant did not dispute the One Month Notice within 10 days of receiving it. The tenant had 10 days from the receipt of the One Month Notice to file with the Residential Tenancy Branch to dispute the One Month Notice. 10 days from September 28, 2019, when the tenant received the One Month Notice, was October 8, 2019. The tenant filed his application to dispute the One Month Notice on October 9, 2019, one day late. It is the tenant's responsibility to dispute a notice to end tenancy within the required time periods.

I find that, pursuant to section 47 of the *Act*, the tenant's failure to file to dispute the One Month Notice within 10 days of receiving the One Month Notice led to the end of this tenancy on the effective date of the notice.

I also find that the<sup>17</sup> notes the tenant admitted to leaving on his neighbour's door, whether or not the upstairs tenants were being noisy, significantly interfered with and unreasonably disturbed the upstairs neighbors, contrary to section 47(1)(d)(i) of the *Act*.

Pursuant to my above findings, I find that the One Month Notice is valid, and the landlord is entitled to an Order of Possession effective November 30, 2019. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by November 30, 2019, the landlord may enforce this Order in the Supreme Court of British Columbia.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on November 30, 2019**, which should be served 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: November 08, 2019

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Residential Tenancy Branch