



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC MNDCT FFL OPC

### 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 Notices to End Tenancy for Cause ("One Month Notices") under section 47; and,
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67.

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

- an Order of Possession pursuant to section 55; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. Each party acknowledged receipt of the other party's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

*Preliminary Issue: Severance of Portion of Tenant's Application*

Residential Tenancy Branch Rules of Procedure, number 2.3 states that:

### 2.3 Related issues

Claims made in the application 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 Notices and the continuation of this tenancy is not sufficiently related to the tenant's other claim for monetary compensation to warrant that they be heard together. The parties were given a priority hearing in order to address the question of the validity of the One Month Notices.

I find that the tenant's other claim is unrelated in that it does not pertain to facts relevant to the grounds for ending this tenancy as set out in the One Month Notices. Accordingly, I exercise my discretion to dismiss all the tenant's claims with leave to reapply except for the cancellation of the One Month Notices.

### Issue(s) to be Decided

Is the tenant entitled to an order for the cancellation of the landlord's One Month Notices under section 47?

Is the landlord entitled to an Order of Possession pursuant to section 55?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

### Background and Evidence

The landlord testified that they served a notice to end tenancy on August 27, 2019 for smoking on the property by posting the notice on the tenant's door. The tenant acknowledged service of the notice.

The landlords testified that they sent the tenant a warning letter on August 19, 2019 advising him that smoking on the property was a breach of the tenancy agreement. The warning letter advised the tenant that the landlord would end the tenancy if this conduct continued. The landlord provided a copy of the warning letter as evidence.

The landlord testified that the tenant continued to smoke on the property after the warning letter was issued. The landlord provided photographs dated August 23, 2019 and September 1, 2019 which the landlord testified showed the tenant smoking on the property on those dates.

The tenant did not deny smoking on the building property. However, the tenant argued that his smoking was permissible because he states that he complied with a local bylaw by not smoking within seven meters of windows and doorways.

The tenant also argued that landlord permitted smoking outside because other residents smoked outside too. The tenant provided photographs of other people smoking outdoors. The landlord testified that these photos provided by the tenant actually show people smoking off the building property.

The tenant also argued that these matters have recently been adjudicated in a recent Residential Tenancy Branch decision. A copy of decision from another arbitration hearing conducted between the parties on August 23, 2019 was provided as evidence by the landlord. The file number for this hearing is referenced on the first page of this decision. I did not find any reference to a ruling on smoking rules in the referenced prior decision.

The landlord also served a notice to end tenancy on August 27, 2019 regarding having pets in the property in contravention of the tenancy agreement. The landlord testified that they served this notice by posting the notice on the tenant's door. The tenant acknowledged service of the notice.

The landlord presented a witness that testified that they saw the tenant bring a rat cage with a rat on the property on August 14, 2019. The landlord presented another witness that testified that they saw the rat cage on the tenant's balcony and they provided a photograph appearing to show the cage.

The tenant denied having rats on the property. The tenant testified that it was just an empty cage.

The landlord served a third notice to end tenancy on September 23, 2019. The landlord testified that they served this notice by registered mail. The tenant acknowledged service of the notice.

The landlord testified that this notice was issued because the tenant was harassing other tenants, property staff and neighbours. The landlord provided multiple witnesses that testified that the tenant was very aggressive and hostile to other tenants. A employee of the property manager testified that the tenant physically threatened him. The landlord testified that the tenant vandalized posters and property in the building.

The tenant denied these allegations. The tenant also argued that these allegations were already adjudicated in the previous hearing referenced on the first page of this decision.

### Analysis

The tenant may dispute a One Month Notice pursuant to section 47 of the *Act*. Pursuant to *Rules* 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that notice to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct.

The landlord has served three notices to end tenancy. I will address each notice separately.

### Landlord's One Month Notice Regarding Smoking

Section 47 of the *Act* states that:

- 47 (1) A landlord may end a tenancy by giving notice to end the tenancy if...
  - (h) the tenant
    - (i) has failed to comply with a material term, and
    - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so...

In this matter, I find that the tenancy agreement had a provision which prohibited smoking. Specifically, the tenancy agreement prohibited smoking on the property. The *Act* defines residential property as including "...the parcel or parcels on which the building, related group of buildings or common areas are located..." Accordingly, I find that the area outside of the buildings is part of the property for the purposes of the *Act*.

*Residential Tenancy Policy Guideline No. 8* states that a "material term is a term that the parties both agree is so important that the most trivial breach of that term gives the

other party the right to end the agreement.” As smoking affects the health and comfort of other occupants, I find that the no-smoking rule is very important. As such, I find that the no-smoking term in this tenancy agreement is a material term of the tenancy agreement.

Based upon the testimony of both parties, I find that the tenant breached the material term by smoking on the property. Further, I am satisfied that the landlord provided an adequate warning to the tenant warning him to stop smoking on the property or his tenancy will be ended. Based upon the testimony of both parties and the photographs provided, I find that the tenant continued to smoke on the property in violation of the tenancy agreement despite receiving the written warning on August 19, 2019.

Further, based on the testimony of the parties, I find that the landlord properly served the tenant with the One Month Notice regarding smoking. Furthermore, I find that the notice complies with the form and content requirements of section 55.

Although the tenant claims that he complied with local bylaws by smoking more than seven meters away from windows and doors, I do not find this defense persuasive. Possible compliance with bylaws does not excuse breaching the tenancy agreement.

Further, I am not persuaded that the landlord permitted other people to smoke on the property. The tenant provided photographs which he stated showed other individuals smoking on the property whereas the landlord testified that these photos were actually taken at a location outside of the property. From the photographs provided, I am unable to determine whether these photos were taken of people smoking the landlord's property. The photographs appear to show a sidewalk area and there was not sufficient evidence to establish this area is on the landlord's property. Furthermore, there was not sufficient evidence to establish that the individuals shown smoking in the photographs are the landlord's tenants. As such, I find that the tenant has not provided sufficient evidence to establish that the landlord permits other tenants to smoke on the property.

Accordingly, the tenant's application to cancel the landlords' notices to end tenancy regarding smoking is dismissed. Furthermore, I find that the landlord is entitled to an order of possession regarding the One Notice regarding smoking and I hereby grant the landlord an order of possession effective two days after service on the tenant. I find that this decision renders the tenant's application to cancel the other two notices to end tenancy moot and I hereby dismiss these applications pursuant to section 62(4).

Since the landlord was successful in this matter, the landlord's application for reimbursement of the filing fee is granted pursuant to section 72. To satisfy this award, the landlord may deduct the sum of **\$100.00** from the tenant's security deposit.

### Conclusion

The tenant's application for a monetary order is dismissed with leave to reapply.

The tenant's application to cancel the landlords' notices to end tenancy are dismissed without leave to reapply.

The landlord's application for reimbursement of the filing fee is granted pursuant to section 72. To satisfy this award, the landlord may deduct the sum of **\$100.00** from the tenant's security deposit

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 18, 2019

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Residential Tenancy Branch