



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## 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 a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- An order restricting the landlord's right to enter the rental unit pursuant to section 70; and
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62.

Both parties attended the hearing, assisted by their respective advocates and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should restrictions be placed on the landlord's right to enter the rental unit?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

### Background and Evidence

This periodic tenancy began in November 2017. The rental unit is a single detached home with one area reserved for storage of the landlord's possessions.

The landlord issued a 1 Month Notice dated September 9, 2019 providing the following reasons for the tenancy to end:

*Tenant or a person permitted on the property by the tenant has:*

- *put the landlord's property at significant risk.*

*Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:*

- *damage the landlord's property;*

*Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.*

The landlord said that on September 6, 2019 the fire department was called as there was a report of an open fire at the rental unit. An excerpt from a written report by the fire department was submitted into evidence. The report details that the fire department observed on the rental property a burnt and smoldering couch that was placed in an outdoor fire pit. The report states that the couch was extinguished and the residents of the property were warned against illegal burns. The report makes mention of a subsequent report on September 7, 2019 of an illegal burn at the rental property.

The landlord testified that there have been numerous complaints regarding the tenant's conduct from neighbours throughout the tenancy. The landlord submits that the tenant entered the area of the rental property reserved for storage of the landlord's items and damaged or destroyed them. The landlord also submitted photographs into evidence and says that the tenant has caused damage to the property during the tenancy.

The tenant acknowledges that the landlord's property, the couch was consumed by fire but explains that the ignition was due to an accident. The tenant testified that they have not been given any notice of complaints from neighbours throughout this tenancy.

The parties also gave evidence regarding whether the landlord provided sufficient notice prior to entering the rental unit. The landlord submits that they gave the tenant notice in writing in accordance with section 29 of the Act. The tenant submits that they were not

provided sufficient notice and therefore the landlord should be restricted from further entry.

### Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

In the present case the tenant confirmed that they were served with the landlord's 1 Month Notice. The landlord submitted into evidence a signed Proof of Service stating that the tenant was served on September 12, 2019. The tenant confirmed they were served personally but said they were served on September 19, 2019 and filed their application for dispute resolution on September 28, 2019.

Faced with conflicting testimonies I must make a determination of credibility. I find that the landlord's evidence regarding service to be more credible than that of the tenant. The landlord's evidence is supported by documentary evidence by way of a signed and witnessed Proof of Service. The tenant was unable to provide cogent details of why they were not served until September 19, 2019. I find that the tenant was served with the 1 Month Notice dated September 12, 2019 on that same date personally by the landlord. Accordingly, I find that the tenant had 10 days from the date of service, until September 22, 2019 to file their application to dispute the 1 Month Notice. I find that the tenant did not file their application within the timeline provided under the *Act*, first filing their application on September 28, 2019.

I find that the tenant has failed to file an application for dispute resolution within the 10 days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ends on the effective date of the 1 Month Notice, October 31, 2019.

I find that the landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit, the effective date of the notice and the reasons for ending the tenancy.

I accept the evidence of the parties that there was a couch that was set aflame and left smoldering in an outdoor fire pit. I find that the action of setting furniture on fire is intrinsically a dangerous one that puts property at significant risk. While the tenant submits that the fire was caused by accident and they attempted to minimize the danger, I find their testimony is contradicted by the written report from the fire department which shows that the couch was left unattended and unextinguished. I accept the landlord's evidence that there is basis for this tenancy to end.

Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 1 Month Notice has passed, I issue a 2 day Order of Possession.

As this tenancy is ending I do not find it necessary to make a finding on the other portions of the application pertaining to an ongoing tenancy.

### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or any occupant on the premises 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: December 10, 2019

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Residential Tenancy Branch