



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FFL; MT, CNC

### Introduction

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

- an order of possession for cause, pursuant to section 55; and
- authorization to recover the filing fee for her application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause, dated October 30, 2019 ("1 Month Notice"), pursuant to section 66 of the *Act*; and
- cancellation of the landlord's 1 Month Notice, pursuant to section 47.

The landlord, the landlord's agent, the tenant, and the tenant's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that her agent had permission to speak on her behalf. The tenant confirmed that his agent had permission to speak on his behalf. This hearing lasted approximately 29 minutes.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The landlord testified that the tenant was personally served with the landlord's 1 Month Notice on October 30, 2019. The tenant confirmed receipt on this date. Both parties agreed that the notice indicates an effective move-out date of November 30, 2019. In

accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on October 30, 2019.

### Issues to be Decided

Is the tenant entitled to more time to make an application to cancel the landlord's 1 Month Notice?

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

Is the landlord entitled to recover the filing fee for her application?

### Background and Evidence

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

Both parties agreed to the following facts. This month-to-month tenancy began on July 7, 2006. Monthly rent in the current amount of \$545.00 is payable on the first day of each month. A security deposit of \$192.50 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit.

The landlord seeks an order of possession based on the 1 Month Notice. The tenant disputes the notice. Both parties agreed that the notice was issued for the following reasons:

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

The landlord's agent testified regarding the following facts. The tenant is a hoarder and has an issue with cleaning his rental unit since May 2019. The landlord provided photographs, claiming that there is garbage everywhere, food on surfaces, mice droppings, fecal matter on the seat and in the toilet, and a two-foot high pile of used tissues. The tenant has brought flies and mice into the rental building and other rental units, damaged the infrastructure of the building, and has affected the quiet enjoyment

of the other tenants in the building. There are 18 total rental units in the rental building, the other rental units are in a good state, other tenants have not brought the flies and mice into the building, other tenants do not have the amount of garbage or food left out in their units, the lower floors have not reported any mice, and the mice travel up the walls in the building. It is the tenant's responsibility to clean his carpet and walls during his tenancy, not the landlord's responsibility.

The tenant's agent testified regarding the following facts. The tenant has an extreme mental handicap, he has hallucinations and is schizophrenic. He did not tell his agent about the 1 Month Notice until November 22, 2019. He did not dispute the notice until November 28, 2019, because his agent runs her own business, does not live in the same town, tried to talk to the landlord first, and then called the RTB in order to determine what to do. The tenant's doctor told the tenant that he needs a mental health worker or his agent to help him.

The tenant's agent stated the following facts. There is a mouse problem in the rental building, the tenant lives on the top of three floors, the mice come up through the bottom floors, other people have mice in their apartments as the mice run freely, and the tenant has a gap under his front door where the mice can enter. The landlord's photographs show garbage on the table from when the tenant had company come over, and they left their lunch there. The tenant has recycling all ready to go. It is not normal for the landlord to go through the tenant's cupboards. The tenant's rental unit is "run down." The rental building is old, the tenant has not had his carpets cleaned or replaced and no painting has been done by the landlord. The tenant's toilet is cracked and rusted. The tenant has two mouse traps in his kitchen but it has not caught any mice in the last six months. The tenant requires a person to help him clean his rental unit and his social workers and mental health workers say the rental unit is ok. The landlord raised this cleanliness issue to the tenant's agent last summer but nothing was said since, so the tenant's agent thought the problem was solved. If there was a further issue with the tenant, the landlord should have told the tenant's agent but instead issued the 1 Month Notice.

### Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. The tenant received the 1 Month Notice on October 30, 2019 and filed this application to dispute it on November 28, 2019. Therefore, he is not within the

time limit under the *Act*. The tenant applied for more time to dispute the notice, claiming that he has a severe mental handicap and is unable to deal with stressful issues without his agent, as per his doctor. I grant an extension of time to the tenant to file his application, as I find that he was unable to deal with this application on his own, and his agent assisted him as soon as she received the notice, after attempting to speak to the landlord and the RTB first. The tenant's application was not made after the effective date of the 1 Month Notice, November 30, 2019.

I am satisfied that the landlord issued the 1 Month Notice for a valid reason. I find that the tenant put the landlord's property at significant risk and seriously jeopardized the health and safety of the landlord and other occupants in the rental building. I find that the tenant failed to abide by section 32 of the *Act*, to "maintain reasonably health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access." I find that the landlord produced sufficient testimonial evidence as well as documentary evidence in the form of photographs to show that the condition of the tenant's rental unit creates a significant risk, as well as a health and safety hazard for the rental unit, the rental building and the landlord and other occupants in the rental building.

The tenant and his agent agreed that the rental unit was "run down," the tenant leaves garbage and food all over his rental unit, the tenant's toilet is in a bad state, there were mice inside the rental unit, and the tenant needs assistance with cleaning, which he has not been receiving. The tenant and his agent agreed that the landlord's photographs represented the condition of the rental unit.

On a balance of probabilities and for the reasons stated above, I find that the landlord is entitled to an Order of Possession effective at 1:00 p.m. on January 31, 2020, pursuant to section 55 of the *Act*. The landlord confirmed that the tenant paid rent for January 2020, but the landlord did not cash the rent cheque, in order to wait for the outcome of this hearing. I find that the tenant is entitled to possession of the unit for the entire month of January 2020 because he paid rent for the entire month, despite the landlord's choice to not cash the tenant's rent cheque. I find that the landlord's 1 Month Notice complies with section 52 of the *Act*.

As the landlord was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the tenant. I order the landlord to deduct \$100.00 from the tenant's security deposit of \$192.50 in full satisfaction of this monetary award. The

remainder of the security deposit of \$92.50 is to be dealt with at the end of this tenancy in accordance with section 38 of the Act.

### Conclusion

I grant an Order of Possession to the landlord effective **at 1:00 p.m. on January 31, 2020**. Should the tenant or anyone 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.

The tenant's application for more time to cancel the landlord's 1 Month Notice is allowed.

The tenant's application to cancel the landlord's 1 Month Notice is dismissed without leave to reapply.

I order the landlord to deduct \$100.00 from the tenant's security deposit of \$192.50 in full satisfaction of the monetary award for the filing fee. The remainder of the security deposit of \$92.50 is to be dealt with at the end of this tenancy in accordance with section 38 of the Act.

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: January 20, 2020

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Residential Tenancy Branch