



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes      CNC MNDC OLC RP PSF LRE AAT LAT

### Introduction

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

- cancellation of a One Month Notice to End Tenancy For Cause, pursuant to section 47 (the One Month Notice);
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to change the locks and/or to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence on file.

The tenant's application was filed within the time period required under the *Act*.

### Preliminary Issue – Scope of Application

*Residential Tenancy Branch Rules of Procedure*, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

### Issues

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, only the relevant details of their respective submissions and arguments are reproduced here.

The rental unit is a mobile home situated on 11 acres of residential property. The mobile home is owned by the landlord and rented to the tenant. The landlord resides in the main house on the property which is at the opposite end of the property from the mobile home. The tenancy began approximately 5 years ago. The monthly rent is \$1000.00.

The landlord served the tenant with a One Month Notice on November 4, 2019 with an effective date of December 31, 2019. The One Month Notice was issued on the following ground(s):

- 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,
  - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that:
  - has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property,

- has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord

The landlord submits that on September 16, 2019 she caught the tenant trespassing into her home. The landlord testified that while she was out the tenant entered her home without permission to drop off mail which is usually dropped off at the barn. The barn is located on the property between the landlord's home and the mobile. The landlord testified that in the past, the tenant has on occasion dropped off the mail in the kitchen of her home. The landlord testified that she had suspected the tenant was stealing money from her petty cash. The landlord used to keep a petty cash envelope in the kitchen. The landlord moved the petty cash to her bedroom on top the nightstand and set up a camera in the bedroom. The landlord testified the tenant entered her private bedroom and went straight for the petty cash envelope. The landlord submitted a copy of the video. The landlord submits the tenant can be seen going straight to the petty cash envelope, picking it up to look inside and placing it back on the nightstand.

The landlord testified that she confronted the tenant about the incident by text message and submitted copies of the messages. The landlord submits the tenant responded by text stating that "I am just a mess" and even offered the landlord her saddles as restitution. The landlord submits that the next morning the tenant left a letter for the landlord by which she blamed the incident on her mental health, apologized and advised the landlord she would working on vacating the rental unit.

The landlord testified that the tenant broke the trust in their 5 years of friendship. The landlord testified that she has hired the tenant in the past to take care of her animals but mostly outside. Regardless, the landlord submits that the tenant had no permission or business entering her private bedroom. The landlord testified the property is situated in a very rural area; therefore, she is comfortable leaving her home unlocked and trusted the tenant.

The tenants advocate argued that the landlord is aware of the tenant's mental health state and set up a trap for the tenant. The advocate argued that the tenant often worked in the landlord's home and had free access to come and go. The advocate submits that the tenant has even been in the landlord's bedroom to use the landlord's printer. The advocate submits that the text message correspondence between the parties after the September 16, 2019 incident supports that the tenant did not take anything, and this was acknowledged by the landlord. The advocate submits that the tenant made a mistake and apologized for it.

The tenant testified that she had on occasion been in the landlord's bedroom before to use the printer, which the landlord was aware of. The tenant acknowledged entering the landlord's bedroom on the date in question. The tenant testified that she had no particular reason to enter the bedroom on this date. The tenant testified that she had gone to the landlord's house to drop off mail. The tenant testified that she was just being "nosy". The tenants testified that the envelope caught her eye and she just went and looked in it. The tenant testified that she saw money inside but did not take any. The tenant testified that she didn't take anything out of the envelope and had no intention to do so either. The tenant testified that she did not offer her saddle to the landlord but rather was just trying to deescalate the situation.

In reply, the landlord submits that the tenant did not have the privilege to enter her home anytime she wants. The landlord submits that she has always been present when the tenant has entered her private bedroom in the past to use the printer. The landlord submits the tenant did not take any money out of the envelope on this occasion only because the landlord took most the money out of the envelope that night and had only left a few dollars in it. The landlord testified that the tenant has taken care of animals in the past but had no reason or permission to be in her home that night, especially her bedroom.

### Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a One Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the One Month Notice.

There was no dispute that the tenant entered the landlord's house and private bedroom on the night of September 16, 2019. It was also not disputed that the tenant upon entering the bedroom went straight to the petty cash envelope, looked inside and then went straight out of the bedroom. There was also no dispute that the tenant did not have permission to enter the landlord's private bedroom, specifically on the night in question. Although the tenant did not take any money from the envelope on this night, I find that on a balance of probabilities the tenant entered the landlord's private bedroom solely with the intention of stealing money. I find that on a balance of probabilities the tenant likely did steal from the landlord in the past as suspected by the landlord. The video evidence obtained by the landlord strengthens this suspicion. I also find the

tenant's initial response to the landlord's text informing her that she had been caught on camera and subsequent apology demonstrate the tenant knew what she did was wrong.

I find that the testimony and evidence of the parties support the issuance of the One Month Notice. I find the tenant's actions seriously jeopardized the landlord's lawful right to privacy.

The tenant's application to cancel the One Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) 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: February 7, 2020

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Residential Tenancy Branch