



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Kits Court Manor Apartments  
Ltd. and [tenant name suppressed to protect  
privacy]

## **DECISION**

### **Dispute Codes**

CNC FFT

### **Introduction**

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the Landlord).

As both parties were present service was confirmed. The parties each testified that they were in receipt of the respective materials. Based on the testimonies I find that all documents were served 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?

Are the tenants entitled to recover their filing fee from the landlord?

### **Background and Evidence**

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

The parties agree on the following facts. This periodic tenancy began in October 2018. The current monthly rent is \$2,062.50 payable on the first of each month. On the morning of December 20, 2019 there was an altercation between the tenant and the landlord's contractors who were working in the parking area of the rental property.

The landlord gave testimony that the contractors reported that the tenant was the aggressor in the interactions. The landlord provided a written report dated December 20, 2019 which records the version of events told by the contractors. The landlord also says that the incident was reported to the police on that date.

The tenant disputes that the landlord's version of events and testified that they were simply fighting back in self-defence. The tenant described the altercation as escalating from a shoving match between the parties to a punch swung by the contractor. The tenant said they grabbed the contractor and were thrown to the ground. The tenant described rising up from the ground and placing the contractor in a headlock and punching him in the head before separating. The tenant says that the contractor picked up an object and approached a third time and the tenant was forced to subdue him again.

The tenant described the events in both their testimony and in correspondence sent to the landlord. The tenant says that there were three contractors working in the parking area but the fight was between only one of the workers and the other two were not present.

The landlord issued a 1 Month Notice dated December 24, 2019 providing the reason for the tenancy to end as the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord citing the incident of December 20, 2019.

### 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.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The parties are agreed that there was an altercation on December 20, 2019 involving the tenant and a contractor working for the landlord. The parties agree that the incident involved a physical fight with shoving, punches thrown and injuries sustained. I find that a fight is by its very nature conduct that seriously jeopardizes the health and safety of the parties involved.

The tenant submits that they were the victims of unwarranted aggression by the landlord's contractor but I find that their testimony and written submissions do not support this interpretation. The tenant's own written submissions states, "After being shoved by the individual I had no choice but to defend myself and push him back" and "After being thrown to the ground by this individual I put him in a head lock and struck him 3 times in the side of the head". I do not find the description of events to portray actions taken in self-defence but rather a series of escalating actions. I do not find the tenant's claim that they had no choice but to push back against the contractor to be reasonable. Even if I were to wholly accept the tenant's version of events I find that the tenant had the simple option of not shoving back and engaging in a pushing match with the contractor. Similarly, after being thrown down to the ground the tenant's evidence is that they chose to rise and continue the physical fight. The tenant could have stayed down or not engaged after rising. I find the tenant's statements to be more consistent with an individual who was engaging in a fight rather than a victim who only employed physical actions in self defence.

I find the landlord's description of events and their written reports prepared on the day that the altercation occurred to be more credible than the undated correspondence prepared by the tenant several days after the incident.

Taken in its entirety I find that the evidence of the tenant demonstrates that they acted in an aggressive fashion and either instigated or escalated the confrontation with the contractor. I do not find the tenant's explanation that the contractor started the fight to be convincing or sufficiently supported in the evidence. Even if I were to accept the tenant's submission that the contractor began the altercation, I do not find that the tenant's response to have been proportional, reasonable or justified.

Regardless of whether another party initiated the conflict, escalating the situation through hostile engagement and throwing additional blows is not a reasonable response. I find that engaging in a physical fight is an act that seriously jeopardizes health and safety and is reasonable basis for a tenancy to end.

I find that the landlord has sufficiently shown on a balance of probabilities that the tenant has engaged in actions that have jeopardized the health and safety of others. Accordingly, I find that the landlord has shown on a balance that there is cause to end this tenancy and dismiss the tenants' application.

Section 55(1) of the *Act* reads as follows:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession, and*

*(b) the director dismisses the tenant's application or upholds the landlord's notice.*

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 and the effective date of the notice. The notice clearly provides the reasons for ending the tenancy.

As I have dismissed the tenants' application to dispute the 1 Month Notice, 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

### Conclusion

The tenants' application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. 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: March 3, 2020

---

Residential Tenancy Branch