



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HIGHPOINT REALTY LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, CNR

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated January 15, 2020 ("One Month Notice"), and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated February 7, 2020 ("10 Day Notice"). The latter application was made via a second application; however, it should have been made as an amendment to the first application; therefore, I have joined the two files into this proceeding, pursuant to Residential Tenancy Branch ("RTB") Rule of Procedure ("Rules") 2.10.

An agent for the Landlord, R.K. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony, but no one attended for the Tenant. The teleconference hearing was open for over 15 minutes, but no one called in on the Tenant's behalf. The Agent said he served the Tenant with his documentary evidence in reply to the Tenant's Application by posting it on his door and sliding a second copy under the rental unit door, "...within five minutes of uploading it to the RTB site on March 15, 2020".

I explained the hearing process to the Agent and gave him an opportunity to ask questions about it. During the hearing the Agent had the opportunity to provide his evidence orally and to answer my questions. I reviewed all oral and written evidence before me that met the requirements of the RTB Rules; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Rule 7.1 states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Agent and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 9:30 a.m. on March 24, 2020, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for over 15 minutes, however, neither the Applicant nor an agent acting on his behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, I dismiss the Tenant's Application(s) without leave to reapply.

### Preliminary and Procedural Matters

The Tenant's email address was in his Application. The Agent provided his email address in his submissions and at the outset of the hearing, and confirmed his understanding that the Decision would be emailed to both Parties, with any Orders emailed to the appropriate Party.

### Issue(s) to be Decided

- Is the One Month Notice valid or should it be cancelled?
- Is the 10 Day Notice valid or should it be cancelled?
- Is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Agent confirmed the evidence in the tenancy agreement, which indicates that the tenancy began on October 1, 2019, with a monthly rent of \$1,725.00, due on the first day of each month. In their evidence, the Landlord said the Tenant paid a security deposit of \$862.50 and no pet damage deposit. The Agent said that the Tenant continues to live in the rental unit, despite not having paid any rent since January 2020.

The Agent confirmed the evidence on the One Month Notice with which he served the Tenant. He confirmed that it was signed and dated January 15, 2020, that it has the rental unit address, was served by being posted on the door of the rental unit on January 15, 2020, had an effective vacancy date of February 15, 2020 (corrected to February 29, 2020 by section 53), and has the following grounds listed as the reasons for the eviction: The Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to ..."; nothing else was checked off.

However, the Landlord wrote: "Tenant stole considerable amounts of donated products from the Strata's community donations bins (video evidence)". The Agent said they issued the One Month Notice, because the Tenant had stolen from the charity bins at

the residential property. The Agent said the Tenant was informed that they consider this a theft. The Agent said: "He has chosen to ignore us, and returned to steal further on two further occasions, the latest being Sunday the 15<sup>th</sup> of March at 15.45.02." The Landlord submitted photographs documenting the theft from the charity bins.

Further, the Agent said that the Tenant posted a notice in the common area of the residential property that he may have COVID-19, and then he deliberately coughed in the faces of two Strata employees. The Agent said: "We consider his actions and behaviour to be intolerable, belligerent and nauseating. He is placing the health of the employees in jeopardy and causing them immense anxiety considering the present BC and world situations." The Agent said that a copy of a letter with this evidence in it was posted on the Tenant's rental unit door on March 18<sup>th</sup>, 2020.

The Landlord indicated that they served the 10 Day Notice, because the Tenant owed the Landlord \$1,725.00 in unpaid rent on February 1, 2020. The Agent said he served the Tenant with the 10 Day Notice by posting it on the rental unit door on February 7, 2020. The 10 Day Notice had the rental unit address, it was signed and dated February 7, 2020, and it had an effective vacancy date of February 20, 2020. The Tenant applied to the RTB to cancel this 10 Day Notice on February 12, 2020; however, he did not note any reasons for why he believes the 10 Day Notice should be cancelled.

The Agent said in the March 24<sup>th</sup>, 2020 hearing that the Tenant has not paid any rent since January 2020.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 47 of the Act allows the landlord to end a tenancy for cause:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

. . .

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) 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, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

In this case, the Landlord alleged that the Tenant stole from a charity bin and they had him on video doing this, which they submitted into evidence. They also submitted photographs of a sign the Tenant put up in the rental unit saying he has the COVID-19 virus. Further, the undisputed evidence before me is that he intentionally coughed in the faces of two Strata employees after having put up this sign. The Tenant applied for dispute resolution, but he did not attend the hearing to pursue his claim against the Landlord's evidence. I find it more likely than not that the Tenant stole from the Landlord and significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property.

When I consider all the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet their burden of proof on a balance of probabilities, and to support the validity of the One Month Notice. I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act as to form and content. Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession. I award the Landlord with an Order of Possession, effective two days after service of the Order on the Tenant, because the effective date of the One Month Notice has passed.

As I have granted the Landlord an Order of Possession for the One Month Notice, I find it unnecessary to further consider the 10 Day Notice.

### Conclusion

The Tenant's Application to cancel the One Month Notice is unsuccessful, as the Landlord's undisputed evidence is that the Tenant stole from the residential property and significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property.

Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible.

Should the Tenant fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 25, 2020

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Residential Tenancy Branch