



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LRE, OLC, CNC, LAT (Tenants)  
                              MNDCL, OPC, FFL, MNDL (Landlord)

### Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenants filed the application January 18, 2020 (the “Tenants’ Application”). The Tenants applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated February 13, 2020 (the “Notice”);
- To suspend or set conditions on the Landlord's right to enter the rental unit;
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement; and
- For authorization to change the locks to the rental unit.

The Landlord filed the application February 03, 2020 (the “Landlord’s Application”). The Landlord applied as follows:

- For compensation for monetary loss or other money owed;
- For an Order of Possession based on the Notice;
- For compensation for damage caused by the tenant, their pets or guests to the unit or property; and
- For reimbursement for the filing fee.

The Tenants appeared at the hearing with T.J. to assist. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the parties. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence for the Tenants' Application.

The Tenants confirmed the registered mail receipt in evidence relates to their hearing package and evidence sent to the Landlord at his address on the tenancy agreement. The receipt shows the package was sent February 28, 2020. The receipt includes Tracking Number 1. I looked this up on the Canada Post website which shows the package was delivered and signed for March 02, 2020.

Based on the undisputed testimony of the Tenants, receipt and Canada Post website information, I am satisfied the Landlord was served with the hearing package and evidence for the Tenants' Application in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). Based on the Canada Post website information, I am satisfied the Landlord received the package March 02, 2020. I find the package was served in sufficient time to allow the Landlord to prepare for, and appear at, the hearing.

The Tenants sought compensation in their written materials but not in the Tenants' Application. I told the Tenants at the outset that they are required to apply for compensation and that requesting it in the written materials is not sufficient. I told the Tenants I would not consider the request for compensation.

Pursuant to rule 2.3 of the Rules of Procedure (the "Rules"), I told the Tenants that matters in an application for dispute resolution must be related and that I would consider the dispute of the Notice as this is the most urgent matter. I did deal with the dispute of the Notice as outlined below. Given there were 30 minutes left in the hearing after dealing with the Notice, I asked the Tenants what they wanted to do with the remaining requests and told the Tenants I would hear them on the access issue if they wished. The Tenants and T.J. asked further questions and sought further clarification such that there were only 10 minutes left in the hearing. I gave the Tenants and T.J. the option of addressing the remaining requests if they thought they could in 10 minutes. The Tenants and T.J. did not make further submissions on the remaining requests. T.J. asked that I outline the requirements for entry to the rental unit in my written decision.

Given how the hearing proceeded, I have considered the dispute of the Notice. The remaining requests are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Act*.

Rule 7.3 of the Rules states:

7.3 Consequences of not attending the hearing

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 re-apply.

The Landlord failed to attend the hearing. In the absence of the Landlord to present his position and his evidence, as required by rule 7.4 of the Rules, the Landlord's Application is dismissed without leave to re-apply.

As I was satisfied the Landlord was served with the hearing package and evidence for the Tenants' Application, I proceeded with the hearing in the absence of the Landlord. The Tenants and T.J. were given an opportunity to present relevant evidence and make relevant submissions. I have considered the relevant documentary evidence and the oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Should the Notice be cancelled?

Background and Evidence

There is mention in the materials of the rental unit being a vacation property. The Tenants confirmed the rental unit is their home and is not used by them for vacation or travel purposes.

A written tenancy agreement was submitted in evidence and the Tenants agreed it is accurate. The tenancy started September 02, 2019 and is for a fixed term ending April 30, 2020.

The Notice was submitted in evidence. The Tenants confirmed they received the Notice January 13, 2020.

### Analysis

The Notice was issued pursuant to section 47 of the *Act*. The Tenants had 10 days to dispute it pursuant to section 47(4) of the *Act*.

I accept the undisputed testimony of the Tenants that they received the Notice January 13, 2020. The Application was filed January 18, 2020, within the 10 day time limit.

Pursuant to rule 6.6 of the Rules, it is the Landlord who has the onus to prove the grounds for the Notice. Given the Landlord did not appear, the Landlord has failed to prove the grounds for the Notice. The Notice is therefore cancelled. The tenancy will continue until ended in accordance with the *Act*.

I have not considered the remaining requests of the Tenants. However, I note that both parties are bound by the *Act*. Section 29 of the *Act* states:

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Section 88 of the *Act* sets out how notice can be given and states:

88 All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

- (i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- (j) by any other means of service prescribed in the regulations.

RTB Policy Guideline 7 deals with the issue of entering a rental unit and both parties should refer to this to understand their rights and obligations. It can be found on the RTB website at: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>.

### Conclusion

It is the Landlord who has the onus to prove the grounds for the Notice. Given the Landlord did not appear, the Landlord has failed to prove the grounds for the Notice. The Notice is therefore cancelled. The tenancy will continue until ended in accordance with 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 *Act*.

Dated: March 23, 2020

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Residential Tenancy Branch