



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC-MT, OLC, LRE, CNE, AAT, OT, LAT, FFT

### Introduction

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

- Cancellation of a One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 46;
- An order to extend the timeline for disputing the Notice, pursuant to section 66; a
- An order requiring the landlord to comply with the Act, regulations, and/or tenancy agreement, pursuant to section 62;
- An order to restrict or suspend the landlord's right of entry, pursuant to section 70;
- An order to allow access for the tenant or their guests, pursuant to sections 30 and 70;
- An order of authorization for a lock change by the tenant, pursuant to section 31;
- An order for return of personal property, and
- Recover the filing fee for this application from the landlord, pursuant to section 72.

Tenant JH and witness JR attended the hearing. The landlord's representative DC and witnesses JR and AC also attended. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present service of the notice of hearing and evidence (the materials) presented by the parties was confirmed. In accordance with sections 88 and 89 of the Act, I find the parties were duly served with the materials.

### Preliminary Issue - Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim to cancel the Notice is sufficiently related to the application for an order to extend the timeline for disputing the Notice to warrant that they be heard together.

The tenant's other claims rest largely on facts not germane to the question of whether there are valid grounds for ending this tenancy as set out in the Notice. I exercise my discretion to dismiss all of the tenant's other claims with leave to reapply.

Leave to reapply is not an extension of any applicable time limit.

### Issues to be Decided

1. Is the tenant entitled additional time to dispute the Notice?
2. If the tenant's application is dismissed, is the landlord entitled to an Order of Possession?
3. Is the tenant authorized to recover the filing fee for this application from the landlord?

### Background and Evidence

While I have turned my mind to all the evidence provided by the parties, including documentary evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the parties; it is their obligation to present the evidence to substantiate their claims.

Both parties agreed the tenancy started on November 01, 2012. Rent is \$872.00 per month, due on the first day of the month. There are no arrears. At the outset of the tenancy a security deposit of \$397.50 was collected and the landlord still holds it in trust. The tenant continues to reside at the rental unit. A tenancy agreement dated November 02, 2012 was submitted into evidence. The agreement states: "These premises are for the use and occupation of [tenant] only. No pets".

The Notice is dated February 21, 2020 and the effective date is March 31, 2020. A copy of the Notice was provided. The reasons to end the tenancy are:

- The tenant has allowed an unreasonable number of occupants in the unit/site.
- The tenant or a person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The details of cause section of the Notice mentioned: "SEE ATTACHED ADDENDUM". The one-page addendum dated February 21, 2020 states:

- 1) Tenant significantly interfered with or unreasonably disturbed another occupant or the landlord:
  - Tenant has been notified on a number of occasions regarding excessive noise emanating from their apartment especially late into the evening between the hours of 10 PM and 9 AM. There have been verbal warnings provided as well as written notice delivered on May 22, 2018, July 19, 2019 and December 18, 2019.
  - On January 21, 2020 and January 28<sup>th</sup> 2020, additional noise complaints were received from a neighbour stating there was loud music emanating from apartment throughout the night and still into the morning when they left for work.
- [...]
- 2) Tenant is in breach of a material term of the Tenancy Agreement
- 3) Tenant has allowed an unreasonable number of occupants in the unit

The landlord affirmed the Notice was posted to the tenant's door on February 21, 2020 and mailed by registered mail to the tenant on that day.

The tenant affirmed he received the Notice posted to his door on February 23, 2020 and he received the registered mail on February 25, 2020. The tenant submitted this application in person on March 06, 2020.

Both parties also agreed the Notice dated February 21, 2020 is the only Notice being disputed in this application. A previous notice to end tenancy dated January 30, 2020 was withdrawn by the landlord.

The tenant affirmed the statutory timeline to apply to dispute the Notice is ten business days, so he applied within the statutory timeline.

The landlord affirmed the tenant frequently plays loud music and uses a television in a high volume throughout the night and neighbours are complaining. The tenant affirmed he does not play loud music, he only has small computer speakers and he does not have a television.

The landlord affirmed the tenant was violent with another tenant in the same residential complex earlier in 2020. Witness JR stated she lives in the rental unit above the tenant's unit since January 2019 and she constantly listens to loud music originating from the tenant's rental unit and he seemed intoxicated in the interactions they had. Witness JR stated the tenant pounded and kicked her door in an incident earlier this year.

The tenant affirmed he went to witness JR's rental unit only to slide a complaint letter under the door and he only knocked on her door. The letter (submitted into evidence) the tenant submitted to JR is dated February 27, 2020 and mentions that JR is loud and wants to frustrate his tenancy.

The landlord affirmed the tenant breached a material term of the tenancy agreement by having a cat. The landlord learned in 2017 the tenant had a cat and sent him a warning letter. This cat has died and the tenant got a new cat.

A warning letter regarding excessive noise and no pet policy was sent to the tenant on July 19, 2019 was submitted into evidence.

The tenant affirmed the previous landlord knew he has a cat and did not have any objection.

The landlord affirmed the tenant has an additional occupant living in the rental unit. The tenant affirmed he has an occupant with him since the beginning of the Covid19 pandemic and she can not leave his rental unit because of the restrictions related to the pandemic. Before the pandemic the occupant was an eventual guest of the rental unit.

### Analysis

Based on the tenant's testimony I find the tenant received the Notice on February 23, 2020, when he got a copy of the Notice posted to his door. The tenant also received the registered mail package containing the Notice on February 25, 2020. However, on February 23, when the tenant got the copy of the Notice on his door, he was fully aware of the Notice. Thus, I find the tenant received the Notice in accordance with section 88(g) of the Act on February 23, 2020.

This application was filled in person on March 06, 2020.

Page 3 of the Notice received by the tenant states:

#### **2. INFORMATION FOR TENANTS**

You have the right to dispute this Notice **within 10 days** after you receive it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch or at a Service BC Office. An arbitrator may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.

If you do not file an Application within 10 day, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page one of this Notice (you can move out sooner). If you do not file an Application, move or vacate, your landlord can apply for an Order of Possession that is enforceable through the court.

**Note: the date a person receives documents is what is used to calculate the time to respond.**

Sections 47(4) and (5) of the Act state:

- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
  - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit by that date.

The tenant has applied for more time to dispute the Notice, claiming he thought the deadline referred to business days and not calendar days. The language on the Notice states the tenant must dispute within 10 days and I do not find the tenant had reason to believe the 10 days excluded weekends or otherwise referred to business days. The tenant's application for additional time to dispute the Notice is dismissed.

Section 47(5) is mandatory, and I do not have discretion as to its application. Based on the parties testimony I find that the tenant did not file an application to dispute the notice within 10 days. Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice (March 31, 2020) and must move out of the rental unit.

The Notice is in accordance with Section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the effective date, the grounds to end tenancy and is in the approved form.

As the tenant is occupying the rental unit, I find that the landlord is entitled to an order of possession effective two days after service, pursuant to section 55(1) of the Act.

It is not necessary for me to determine if the tenant acted as alleged by the landlord on the Notice due to the application of sections 47(4) and (5) of the Act.

As such, I make no findings as to the truth of the landlord's allegations about the conducts of the tenant.

As the tenant was not successful, he is not entitled to recover the filing fee.

I warn the tenant that he may be liable for any costs the landlord incur to enforce the order of possession.

### Conclusion

I dismiss the tenant's application for additional time to dispute the Notice without leave to reapply. The tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

I grant an Order of Possession to the landlord effective **two days after service of this order** on the tenant. Should the tenant 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: April 22, 2020

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Residential Tenancy Branch