



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, PSF, LRE, AAT, OLC, FFT

### Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65;
- Order to Allow Access for the Tenant or their guests, pursuant to sections 30 and 70; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord, resident manager K.S., tenant J.B, tenant G.B and tenant J.M. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenants personally served the landlord with their application for dispute resolution; however, neither party could recall on what date. I find that the landlord was served with the tenants' application for dispute resolution in accordance with section 89 of the *Act*.

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution (the "application") seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the

application is dismissed or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

### 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 regarding the One Month Notice to End Tenancy for Cause (the "One Month Notice") and the continuation of this tenancy is not sufficiently related to any of the tenants' other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenants' other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the One Month Notice. I exercise my discretion to dismiss all of the tenants' claims with leave to reapply except cancellation of the notice to end tenancy and recovery of the filing fee for this application.

### Issues to be Decided

1. Are the tenants entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Are the tenants entitled to authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. If the tenants' application is dismissed or the landlord's Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 1, 2019 and is currently ongoing. Monthly rent in the amount of \$1,800.00 is payable on the first day of each month. A security deposit of \$900.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on January 29, 2020 the One Month Notice with an effective date of February 29, 2020 was posted on the tenants' door. The tenants confirmed receipt of the One Month Notice on January 29, 2020.

The One Month Notice was entered into evidence and states the following reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site.
- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

The landlord testified that he served the tenants with the One Month Notice due to a variety of factors, but predominately because tenant G.B. physically assaulted him on January 29, 2020. The landlord testified that a warning letter was posted on the tenants' door earlier in the day on January 29, 2020 which stated:

Dear tenants

We have noticed that a person that was recently evicted from his apartment in our building is now residing with you.

Be aware that is against the terms of the contract you have signed with [the landlord company]

Please take steps to keep this person away from residing with you.

Both parties agree that the person the January 29, 2020 letter references is tenant J.B.'s son, M.S., who was evicted from the subject rental building for non-payment of rent.

The landlord testified that he and his wife K.S. are resident managers of the subject rental building. The landlord testified that tenant G.B. and M.S. attended at his home in the evening of January 29, 2020 yelling and screaming about the warning letter that was posted on the tenants' door earlier that day. The landlord testified that when he opened the door to his apartment, tenant G.B. and M.S. attempted to gain entry and that tenant G.B. crumpled the warning letter up and tried to shove it in his mouth. The landlord testified that G.B. hit him in the face while trying to cram the warning letter in his mouth. After tenant G.B. struck him, he pushed G.B. out of his unit and his wife, manager K.S., helped him close the door. The landlord testified that manager K.S. called the police and they attended, though no charges were laid as the only injury he suffered was a small cut on his lip. The landlord testified that G.B. was drunk and smelt of beer.

Manager K.S. testified to the following facts. On January 29, 2020 M.S. and tenant G.B. came to her and the landlord's door. Manager K.S. asked M.S. and tenant G.B. to leave as this is her home and not the office. Tenant G.B. told her to shut her bitch mouth and stepped 2-3 inches into her home. Tenant G.B. and M.S. were drunk and continued to yell and swear at manager K.S. and the landlord and tenant G.B. then tried to shove the warning letter into the landlord's mouth. The landlord then pushed G.B. out of their home and manager K.S. helped the landlord close the door while M.S. and tenant G.B. threatened to kick their asses. Once the door was closed tenant G.B. and M.S. continued to yell through the door and threaten physical harm. Manager K.S. then called the police who attended.

Tenant J.B. testified that tenant G.B. did not assault the landlord and that while the police were called, they did not lay any charges against tenant G.B. Tenant G.B. testified that he and M.S. confronted the landlord at the door to the landlord's apartment. Tenant G.B. testified that he did not shove the crumpled-up warning letter in the landlord's mouth but did shove it in his face. Tenant G.B. testified that there was "no damage done" to the landlord.

Tenant J.M. testified that no one saw her, but she witnessed the January 29, 2020 confrontation. Tenant J.M. testified that tenant G.B. did not try to shove the warning letter in the landlord's mouth but did shove it in his face. Tenant J.M. testified that tenant G.B. and M.S. did not bang on the landlord's door after the landlord closed it.

Manager K.S. testified that the hallway in front of her and the landlord's apartment is in an L shape and that the only way for tenant J.M. to have witnesses the altercation was for her to be directly in front of their door and would have been seen by herself and the landlord. Manager K.S. testified that tenant J.M. did not witness the altercation.

Both parties agreed that the landlord served them with two further warning letters dated February 9, 2020 and February 16, 2020 which stated the same thing as the January 29, 2020 warning letter.

The landlord testified that in addition to the January 29, 2020 altercation, the One Month Notice was served on the tenants because they breached their tenancy agreement by having a pet and smoking in the subject rental property. The landlord entered into evidence photographs of a cat in the window of the subject rental property and photographs of a person in the subject rental property. The landlord testified that the photos show that tenant J.M. is smoking inside the rental property contrary to the tenancy agreement. The photographs are taken at a distance and are grainy, it is not possible to distinguish smoking implements in the photograph.

The tenancy agreement says “no pets” under section 4 of the tenancy agreement where the amount of a pet damage deposit would be written. Both parties agreed that at the beginning of the tenancy the landlord informed the tenants that they were permitted to have a cat but would have to pay a pet damage deposit and the tenants testified that they did not have a cat and that is why “no pets” was written on the tenancy agreement. Both parties agree that the tenants did not pay a pet damage deposit for the cat. Tenant J.B. testified that she has a cat.

Tenant J.M. testified that she does not smoke inside and is not smoking in the photographs. While the tenancy agreement was entered into evidence, the five-page addendum was not entered into evidence. The tenancy agreement does not contain a no smoking clause.

### Analysis

Upon review of the One Month Notice, I find that it complies with the form and content requirements of section 52 of the *Act*.

Section 47(1)(d)(i) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if 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.

I find that, based on the testimony of both parties, tenant G.B., on January 29, 2020,

without the consent of the landlord, applied direct force intentionally to the landlord's face. I find that whether or not tenant G.B. was trying to shove the warning letter in the landlord's mouth is irrelevant, as it is confirmed by all parties, that the letter was shoved in the landlord's face.

Based on the above I find that tenant G.B. significantly interfered with and unreasonably disturbed the landlord, contrary to section 47(1)(d)(i) of the *Act*. I therefore dismiss the tenants' application to cancel the One Month Notice.

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that since the One Month Notice complies with section 52 of the *Act* and the tenants' application to cancel the One Month Notice was dismissed, the landlord is entitled to a two-day Order of Possession.

As I have found that the landlord is entitled to an Order of Possession under section 47(1)(d)(i) of the *Act*, I decline to consider the landlord's other grounds for eviction.

The tenants were unsuccessful in their application for dispute resolution, I therefore find that they are not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. Should the tenants 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 15, 2020

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Residential Tenancy Branch