



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

**CNC, FFT**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The landlord attended the hearing and had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional ten minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord provided affirmed testimony that the landlord was not served with the Notice of Hearing and Application for Dispute Resolution but learned about the hearing from the tenant’s girlfriend who gave him copies of some pages of the documents; the landlord then confirmed the date of the hearing by calling the RTB. The landlord requested to proceed with the hearing. Although not served in accordance with section

89 of the *Act*, in consideration of the circumstances and admissible evidence, I find the landlord was sufficiently served pursuant to section 71(2)(c) of the *Act*.

I informed the landlord that in the event I dismissed the tenant's application to cancel the Notice issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an order of possession in favour of the landlord. Section 55 states 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 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.*

-  
*Tenant's application*

-  
Rule 7.3 of the Rules of Procedure provides as follows:

***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 reapply.*

As the applicant did not attend the hearing and in the absence of any evidence or submissions on behalf of the applicant, I order the tenant's application dismissed without leave to reapply.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

#### Background and Evidence

The landlord provided uncontradicted evidence as the tenant did not attend the hearing. The landlord testified that the month-to-month tenancy began on May 1, 2019. Rent is \$1,000.00 monthly payable on the first of the month. The tenant provided a security deposit of \$500.00 which the landlord holds.

The landlord testified the tenant has regular, ongoing verbal and physical altercations in the unit with his girlfriend; these fights are heard by the landlord and his family who live upstairs and significantly disturb their peace and quiet. The landlord submitted considerable documentary evidence in support of his claims including a written timeline of events and recordings of the arguments.

The landlord testified that the police have been called to the tenant's unit on several occasions; on one occasion the tenant alleged his girlfriend assaulted him with a weapon resulting in a criminal charge. The noisy arguments sometimes occur during the night, disturbing neighbours who have complained to the landlord.

During the State of Emergency, the landlord stated that he is required to work from home as both he and his wife are teachers. He testified to multiple disturbances of loud fighting, walls being hit, noisy comings and goings, and police coming to the unit. The landlord states "it constantly disrupts our living. It makes some members of the family feel unsafe in their own homes. It has caused stress and sleepless nights."

The landlord testified he has repeatedly warned the tenant about his unacceptable conduct and the tenant has always promised that it will cease.

The landlord issued a One Month Notice to End Tenancy for Cause dated February 25, 2020 which provide as a reason for issuance that the tenant has significantly interfered with or unreasonably disturbed another occupant, or the landlord and the tenant has engaged in illegal activity that adversely affects the quiet enjoyment, security, safety or physical well-being of another occupant.

The Notice stated that the landlord served the Notice upon the tenant by posting to the tenant's door on February 25, 2020 thereby effecting service under section 90 on February 28, 2020. The landlord testified to the service. The effective date of the vacancy is March 31, 2020. The landlord submitted a copy of the Notice.

The tenant has not vacated the unit. The tenant filed an Application to cancel the Notice on March 3, 2020 within ten days but has failed to attend the hearing of the tenant's application.

The landlord requested an order of possession.

### Analysis

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

Rule 7.3 of the Rules of Procedure provides as follows:

***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 reapply.*

As the applicant did not attend the hearing and in the absence of any evidence or submissions on behalf of the applicant, I order the tenant's application dismissed without leave to reapply.

As the tenant has failed to appear at this hearing or submit any testimony or evidence, I dismiss the tenant's request to cancel the One Month Notice as well as the other relief requested by the tenant.

Pursuant to section 55(1), the director **must** grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 and the tenant's application is dismissed.

I determine the landlord's Notice complies with section 52. I have dismissed the tenant's application. I therefore find the landlord is entitled to an order of possession.

### Conclusion

I dismiss the tenant's application without leave to reapply.

I grant the landlord an order of possession which is effective two days after service on the tenant.

The landlord must serve this order on the tenant.

If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia enforceable as an order of that Court.

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: May 07, 2020

---

Residential Tenancy Branch