



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, MNDCT, MNRT, RR, LRE, RP, OLC

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”);
- Compensation for monetary loss or other money owed in the amount of \$5,000.00 for harassment;
- Recovery of the cost of \$270.00 in emergency repairs completed;
- A \$500.00 rent reduction for repairs, services, or facilities, agreed upon but not provided;
- An order restricting or setting conditions on the Landlord’s right to enter the rental unit;
- An order for the Landlord to complete repairs; and
- An order for the Landlord to comply with the *Act*, regulations, or tenancy agreement with regards to their right to quiet enjoyment and second hand smoke.

I note that section 55 of the *Act* requires that when a tenant submits an 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 and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Landlord F.B. (the “Landlord”) and their Agent C.N. (the “Agent”), both of whom provided affirmed testimony. No one attended on behalf of the Tenant. The Landlord and the Agent attended the hearing at the scheduled time, ready to proceed, and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Landlord Acknowledged receipt of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, notice of the hearing, and a copy of the One Month Notice. The Landlord also states that their documentary evidence was served on the Tenant at the rental unit well in advance of the hearing. Although the line remained open for 27 minutes, neither

the Applicant nor an agent acting on their behalf appeared to provide evidence or testimony for my consideration.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts, evidence and issues in this decision.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. I verified that the hearing details shown on the Notice of Dispute Resolution Proceeding were correct and I note that both the Landlord and the Agent were able to call into the teleconference at the required time using the information contained in the Notice of Dispute Resolution Proceeding served on them by the Tenant. As the Landlord, the Agent and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 11:00 A.M. (Pacific Time) on May 22, 2020.

Rule 7.3 of the Rules of Procedure 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. Although the line remained open for 27 minutes, neither the Applicants nor an agent acting on their behalf appeared to provide any evidence or testimony for my consideration. As no one appeared on behalf of the Tenant to provide me with any evidence or testimony and pursuant to rule 7.3 of the Rules of Procedure, I therefore dismiss the following claims by the Tenant, without leave to reapply:

- Compensation for monetary loss or other money owed in the amount of \$5,000.00 for harassment;
- Recovery of the cost of \$270.00 in emergency repairs completed;
- A \$500.00 rent reduction for repairs, services, or facilities, agreed upon but not provided;
- An order restricting or setting conditions on the Landlord’s right to enter the rental unit;
- An order for the Landlord to complete repairs; and
- An order for the Landlord to comply with the *Act*, regulations, or tenancy agreement with regards to their right to quiet enjoyment and second-hand smoke.

However, as the burden of proof in a hearing regarding the validity of a notice to end tenancy lies with the landlord, and not the tenant, I proceeded with the hearing as scheduled on the matter of the One Month Notice, pursuant to rules 7.3 and 6.6 of the Rules of Procedure.

### Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If the One Month Notice is upheld or the Tenant's application seeking cancellation of the One Month Notice is dismissed, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

### Background and Evidence

The Landlord and Agent stated that the one-year fixed-term tenancy began approximately four years ago, that the tenancy is now month to month, and that rent in the amount of \$2,500.00 is due on the first day of each month.

The Landlord and Agent stated that there have been ongoing issues with the tenancy and the Tenant for some time, and that as a result, a One Month Notice was posted to the door of the rental unit on February 25, 2020. The Agent stated that they posted the One Month Notice in the presence of a witness, and there is a witnessed and signed Proof of Service in the documentary evidence before me indicating that the One Month Notice was served as described above.

The One Month Notice in the documentary evidence before me is signed by the Agent and dated February 25, 2020, has an effective date of March 31, 2020, and states the following grounds for ending the tenancy:

- The Tenant has allowed an unreasonable number of occupants in the rental unit;
- The Tenant is repeatedly late paying rent;
- The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disputed another occupant or the Landlord;
- The Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk;
- The Tenant not done required repairs of damage to the rental unit or property;
- The Tenant has breached a material term of the tenancy agreement and has not corrected the breach within a reasonable time of being given written notice to do so.

Under the heading "Reasons for Eviction" on the One Month Notice the Tenant is directed to review an attached document titled reasons for eviction section. The one-page reasons for eviction section, which was attached to the One Month Notice, contains detailed descriptions regarding the above noted grounds.

In the hearing the Agent stated that rental unit is half of a duplex owned by the Landlord, and that they reside in the other half. The Agent stated that the Tenant has threatened both them and their children and is continually aggressive towards them and the Landlord. In support of this testimony the Landlord and Agent pointed to a video in the documentary evidence before me wherein the Tenant can be seen and heard yelling, swearing, using offensive racial slurs and slamming a gate.

The Agent stated that in the last 18 months, the Tenant has only paid rent on time once, and that 9 separate 10 Day Notice's to End Tenancy for Unpaid Rent of Utilities have been served, and that they already have an Order of Possession for the rental unit in relation to one such notice.

The Landlord and Agent stated that although there are only three people authorised to reside in the rental unit according to the tenancy agreement, and that the tenancy agreement contains a material term that the Tenants are to obtain approval from the Landlord for all additional occupants, there are currently at least 8 people residing in the rental unit, which is both an unreasonable number of occupants and a breach of a material term of the tenancy agreement as they never received approval for the additional occupants. The Agent and Landlord also stated that the Tenant has changed the locks without the Landlords consent, has refused to provide the Landlord with a copy of the new keys or means of access for the rental unit, and calls the police when the Landlord attempts to enter the rental unit when proper notice has been given under the *Act*.

The Landlord and Agent stated that the Tenants have placed the property at significant risk by changing the locks and failing to provide the Landlord with a key, as they now have no means of access if there is an emergency, and by failing to maintain the property as there is garbage and refuse strewn about which is attracting rodents. The Landlord and Agent stated that despite having been served with two separate notices to clean up the property, nothing has been cleaned, and that the Tenants and occupants have responded by spray painting the exterior of the rental unit with "do not enter" and inappropriate language.

In support of their testimony, the Landlord and Agent provided several photographs, a video, copies of a decision and orders for a previous hearing regarding the payment of rent, copies of a notice for the Tenant to make repairs dated February 24, 2020, a document stating that the notice for the Tenant to complete repairs and for entry to the rental unit was posted to the door of the rental unit on February 24, 2020, and a copy of a letter dated January 30, 2020, stating that the Tenant has breached material terms of the tenancy agreement by changing the locks without permission and refusing lawful entry to the rental unit by the Landlord or their agents and stating that a notice of entry has been attached to the breach letter.

The Landlord stated that if the Tenant's Application is dismissed and the One Month Notice is upheld, they would like an Order of Possession for the rental unit as soon as possible, as the Tenant currently owes outstanding rent and is placing the property at risk.

Neither the Tenant nor an agent acting on their behalf attended the hearing to provide evidence or testimony for my consideration or to dispute the affirmed testimony of the Landlord and Agent or the documentary evidence referred to by them in the hearing.

### Analysis

In the hearing the Agent stated that they served the Tenant with the One Month Notice by posting it to the door of the rental unit on February 25, 2020, and pointed me to the Proof of Service in the documentary evidence before me in support of this testimony. In their Application the Tenant stated that they received the One Month Notice on February 28, 2020. Based on the above, I find that the Tenant received the One Month Notice on February 28, 2020, as stated in their Application. In any event, I find that the One Month Notice would also have been deemed served on February 28, 2020, in accordance with section 90 (c) of the *Act*, which states that unless earlier received, items posted to the door of a rental unit are deemed received 3 days later.

Based on the affirmed and uncontested testimony of the Landlord and Agent in the hearing and the documentary evidence before me for review, I am satisfied that the Landlord had cause to serve the One Month Notice on the Tenant for the stated grounds. As a result, I uphold the One Month Notice and dismiss the Tenant's Application seeking cancellation of the One Month Notice without leave to reapply.

As the One Month Notice is signed and dated, gives the address for the rental unit and an effective date for the notice, states the grounds for ending the tenancy, and is in

writing in the approved form, I find that it complies with section 52 of the *Act*. I therefore find that the Landlord is entitled to an Order of Possession for the rental unit pursuant to section 55 (1) of the *Act*. As the effective date of the One Month Notice, March 31, 2020, has passed, the Order of Possession will be effective two (2) days after service on the Tenant.

### Conclusion

The Tenant's Application is dismissed, in its entirety, without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two (2) 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, this Order may be filed in the Supreme Court of British Columbia and enforced 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 25, 2020

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Residential Tenancy Branch