



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC CNR FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on August 18, 2020. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- Cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47.
- Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent
- Recovery of the filing fee

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Tenant explained, and the Landlord confirmed that no 10 Day Notice was issued by the Landlord, only a 1 Month Notice to End Tenancy for Cause. I hereby dismiss the Tenant's application to cancel the 10 Day Notice, as it is not required. The remaining analysis will focus on the Tenant's application to cancel the 1 Month Notice (the Notice).

The Tenant stated that he served his evidence in 3 separate packages, in person, to the Landlord. The Landlord confirmed receipt of these packages and did not take issue with the service of these documents. I find the Tenant sufficiently served his evidence for the purposes of this hearing.

The Landlord stated that he sent his evidence by email, and did not serve the Tenant in any other manner. During the hearing, the Landlord stated that he sent the evidence by way of a couple different emails to the Tenant with different attachments (videos, photos, text messages). The Landlord did not specify when these emails were sent, what each email contained. I note this application was filed July 13, 2020.

During the hearing, the Tenant took issue with the Landlord's service methods, and stated that he did not get the emails from the Landlord containing the evidence. The Tenant stated he has received some emails from the Landlord, and email is a method of communication they use at times, but stated the Landlord's emails containing the evidence did not come through.

I find it important to note that during March 2020, the Director of the Residential Tenancy Branch made a directive to allow the service of evidence by email. This was a temporary measure in place to ensure physical distancing protocols were followed in the wake of the global COVID-19 pandemic. However, as of June 24, 2020, the Director rescinded the March 2020 order allowing email service of documents. As such, as of June 24, 2020, email was no longer an approved method of service. Effective June 24, 2020, parties are expected to be able to demonstrate that they have sufficiently served the other party with the application and evidence in a verifiable manner, in accordance with the Act and the Rules of Procedure.

Service provisions are typically laid out in section 88, 89 and 90 of the Act. Email service is not an approved method of service under the Act. If one party is able to provide proof that they attempted to serve the other party in a manner contemplated under section 88 or 89 of the Act, then those documents may be deemed to be received regardless of whether or not they were actually received by the other party. Typically, this requires some proof of service to substantiate that the documents were sent in accordance with the Act and the Rules.

In this case, I decline to deem that the Landlord's evidence has been served, as there is no evidence to show the Landlord served the Tenant in any of the methods detailed under section 88 or 89 of the Act. As stated above, email is not an acceptable and approved method of service, particularly when the other party refutes getting the emails that were allegedly sent. I find there is insufficient evidence that the Landlord sufficiently served his evidence in accordance with the Rules of Procedure and the Act. I find the Landlord's evidence is not admissible and it will not be considered in this proceeding.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord selected the following grounds on the Notice:

Tenant or a person permitted on the property by the Tenant has:

- seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.
- put the Landlord's property at significant risk.

Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to:

- damage the Landlord's property.

Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit/site or property/park.

Tenant has not done required repairs of damage to the unit/site.

Under the Details of Cause section, the Landlord specified the following:

“did not pay the rent for June (\$300.00)” and “Damaged our property. Destroyed the lock and stole all the furnitures. Total damage (\$2,800.00). Not planning to pay the damage.”

The Tenant acknowledged receiving the Notice on July 8, 2020. During the hearing, the Landlord explained that it was a misunderstanding regarding the late/incomplete rent for June, as he had listed under the details of cause section. As such, he did not wish to pursue this portion of the Notice. The Landlord was asked to explain why the Notice was issued and to elaborate of the grounds he selected. The Landlord spoke to two other issues during the hearing. The issues raised by the Landlord were that the Tenant

broke into one of the spare rooms in the rental unit (which was locked), broke the lock on the door, disposed of the furniture in that room (which belonged to the Landlord), and had no permission to do so, or to utilize that space for the himself. The other issue raised by the Landlord is that the Tenant has been harassing and affecting both other (previous) Tenants, as well as the Landlord who lives upstairs.

The Landlord explained that he lives upstairs, and he rents out the basement, which is self-contained and has 3 bedrooms. The Landlord stated that he rents each of these 3 bedrooms out separately, under separate tenancy agreements. The Landlord stated that in March 2020, one of other renters moved out because he found the Tenant on this application was rude and aggressive. The Landlord stated that since that time, the one room which was previously occupied, is empty (aside from the Landlord's few furnishings). The Landlord stated that after that renter moved out, they locked the room, and since it was never part of the Tenant's (on this application) rental space, they kept it locked. The Landlord stated that the room which was locked was furnished with a bed, lamp, table, and fridge, and the Landlord rented it out as a furnished rental.

The Landlord further explained that they went on holiday from the end of March until July. When they left, the room was locked, untenanted, and furnished with the Landlord's belongings. When they returned in July, the lock was changed/broken, and the Landlord's belongings were missing. The Landlord stated that they know it was the Tenant who broke into this spare room, and got rid of the belongings because they have video of him getting rid of the items.

The Tenant provided a completely different version of events and denied that he broke into the spare room. The Tenant denies that he broke the lock, and stated that the items he got rid of were from his room. The Tenant denies every being aggressive, rude, or disruptive to any of the other renters or to the Landlord. The Tenant stated that he hired a junk removal company to get rid of several items he had in his room. The Tenant acknowledged giving away the furniture, but stated that it was furniture from his room, not the room the Landlord says was broken into.

The Tenant stated that he has tried to repay the Landlord for the items he got rid of after he realized the Landlord took issue with it. However, the Landlord wants to end the tenancy rather than deal with offers from the Tenant. The Landlord does not trust the Tenant at this point because the Tenant unilaterally decided to dispose of the Landlord's furnishings (bed, fridge, lamp etc). The Landlord stated that since they rent each of the

rooms out furnished, this is an integral part of the rental unit, and it is not right for the Tenant to dispose of necessary furnishings in the unit, at will.

The Tenant made several offers in the hearing to repay the Landlord for the items he disposed of, but the Landlord did not wish to entertain any offers that involved continuing the tenancy. The parties were unable to reach an agreement, as the Tenant wished to stay, and the Landlord wishes for the tenancy to end as they cannot trust him anymore.

### Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings with respect to whether there are sufficient grounds to end the tenancy. More specifically, since my findings hinge on the the issue relating to the Landlord's property, it is not necessary to speak to, resolve and address the other issues with respect to the Tenant's alleged disruptive and offensive behaviour.

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

I turn to the second ground indicated on the Notice:

Tenant or a person permitted on the property by the tenant has:

- put the Landlord's property at significant risk.

I note the Landlord's documentary evidence (videos, texts, photos) was not served sufficiently for the purposes of this proceeding, as previously stated, and it will not be considered. Overall, I find there is insufficient evidence that the Tenant broke into the spare bedroom, and broke the lock. However, the Tenant acknowledged getting rid of several major furniture items that were not his and that belonged to the Landlord. The Tenant attempted to offer to repay the Landlord for the items he disposed of in the hearing.

I note the Tenant rents one room in the Landlord's basement, which is part of a 3 bedroom suite. I further note that the Landlord provides these bedrooms furnished, and that the furniture is an integral part of the rental units, and the tenancy agreements. The

Landlord stated that all rooms were furnished, including the Tenant's room, and the room that was broken into and cleaned out. Although I find there is insufficient evidence to show that the Tenant broke into the spare room, I note that he admitted to disposing of the Landlord's property, which he has since tried to repay him for. Since these furnishings are an integral part of the rentals, due to the rooms being rented as partly furnished, I find the Tenant's actions put the Landlord's property at significant risk. In fact, the undisputed evidence is that the Tenant completely disposed of several large items that belonged to the Landlord, without consent. Regardless of whether or not there is sufficient evidence to prove the Tenant entered the spare room by breaking the lock (and subsequently sold the furniture from that room), there is evidence (by way of the Tenant's testimony) to show he disposed of furnishings that were owned by the Landlord.

I find there is sufficient evidence to show that the Tenant has put the Landlord's property at significant risk and I find the Landlord had sufficient grounds to issue the Notice. The Tenant's application to cancel the Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession. I find that the Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession.

As the Tenant was not successful with his application, I dismiss his claim to recover the cost of the filing fee.

Further, given my findings thus far, it is not necessary to consider the other grounds on the 1 Month Notice.

### Conclusion

The Tenant's application to cancel the 1-Month Notice to End Tenancy for Cause is dismissed. Further, I dismiss the Tenant's request to recover the cost of the filing fee.

The Landlord is granted an order of possession effective **August 31, 2020, at 1pm**. This order must be served 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 and be 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: August 18, 2020

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Residential Tenancy Branch