



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was 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); and
- Recovery of the filing fee.

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 Landlords B.N. and D.N. (the Landlords) and a witness for the Landlords (C.N.), who provided affirmed testimony. No one attended the hearing on behalf of the Tenant. The Landlords were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. The Landlords stated that they were not served with a copy of the Application or the Notice of Hearing by the Tenant and had to contact the Residential Tenancy Branch (the Branch) directly to get information about the Application and information on how and when to attend the hearing. However, the Landlords stated that they wished to proceed with the hearing as scheduled, as they were able to get the hearing information from the Branch yesterday, have received the Tenant’s documentary evidence, and have attended the hearing on time and ready to proceed.

Based on the above and pursuant to rule 7.3 of the Rules of Procedure, the hearing therefore proceeded as scheduled, despite the absence of the Tenant.

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

At the request of the Landlords, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

### Preliminary Matters

The Landlords stated that as the Tenant did not serve them with the Application or Notice of Hearing as required by the Act and the Rules of Procedure, and that as a result, they only became aware of the Application and the hearing details yesterday on August 24, 2020, when they contacted the Branch as a result of receiving some documentary evidence from the Tenant containing reference to a hearing with the Branch and a file number. Records at the Branch confirm that the Landlords contacted the Branch yesterday by phone in order to obtain information regarding the Application and hearing as they stated that they had not been provided with this information by the Tenant.

Given their late awareness of the hearing due to the Tenant's failure to properly notify them of the hearing and to serve them with documentation in relation to the hearing as required, they stated that they were only able to serve their own documentary evidence on the Tenant yesterday, which consists of an impact statement from another occupant of the residential property. The Landlords also submitted a copy of this impact statement to the Branch on August 24, 2020, via the online Dispute Access Site.

Although this evidence was served on the Tenant and submitted to the Branch outside of the service timelines set out in rule 3.15 of the Rules of Procedure, I find that the delay in the service of this evidence by the Landlords is a direct result of the Tenant's failure to properly serve the Landlords with the Application and the Notice of Hearing in accordance with the Act and the Rules of Procedure. Based on the uncontested and affirmed testimony of the Landlords I am satisfied that the Tenant was served with the Landlords' documentary evidence prior to the hearing, and pursuant to section 75 of the Act and rule 3.17 of the Rules of Procedure, I therefore accept this late documentary evidence from the Landlords for consideration in this matter.

As the Landlords stated that they had insufficient time to locate and submit a copy of the One Month Notice to the Branch for my review prior to the hearing, I also permitted the Landlords to submit a copy of the One Month Notice for my review after the conclusion of the oral hearing, provided it was received by 4:30 P.M. on August 25, 2020. As a copy of the One Month Notice was received from the Landlords within the above noted time frame, I have therefore accepted it for consideration in this matter.

#### Issue(s) to be Decided

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

If the One Month Notice is not cancelled or is upheld, are the Landlords entitled to an Order of Possession pursuant to section 55 (1) of the Act?

Is the Tenant entitled to recovery of the filing fee?

#### Background and Evidence

The tenancy agreement in the documentary evidence before me, dated February 1, 2020, states that rent in the amount of \$1,200.00 is due on the first day of each month for the tenancy beginning February 1, 2020.

The Landlords stated that the rental unit is located in a building with mixed residential and commercial use, owned and operated by the Landlords, and that numerous complaints have been received by the Landlords from commercial and residential occupants of the building who have been significantly interfered with and unreasonably disturbed by the Tenant and their guests and occupants. The Landlords stated that staff and clients of a school located in the building as well as other residential occupants have been regularly disturbed and traumatized by extremely loud and volatile arguments occurring in the rental unit, the slamming of doors, and the shouting of profanities since May of 2020, resulting in police attendance and numerous complaints.

The Landlords stated that they are worried about the impact of this behaviour on the other commercial and residential occupants of the building, as they are also their tenants, and that staff and clients of the school located in the building which services vulnerable populations with diverse needs have expressed concerns about their ability to attend the premises while the tenancy continues, given the disturbing nature of the arguments in the rental unit, their frequency and their intensity. As a result, the Landlords stated that a One Month Notice was personally served on the Tenant by the

Landlord B.N. on July 14, 2020. In support of this testimony the Landlords submitted an impact statement from one of the commercial tenants.

The Landlords called a witness, C.N., who testified that they were present when the One Month Notice was personally served on the Tenant by B.N. on July 14, 2020, and that the Tenant accepted the notice without issue as if they were expecting it to be served.

The One Month Notice submitted by the Landlords in the documentary evidence before me is signed and dated July 14, 2020, has an effective date of August 14, 2020, and states that the One Month Notice has been served because 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. Under the details of cause section, the Landlords provided significant details as to why the One Month Notice has been served.

No one attended the hearing on behalf of the Tenant to provide any evidence or testimony for my consideration or to point me to any documentary evidence to support the Tenant's Application seeking cancellation of the One Month Notice.

### Analysis

Based on the affirmed and uncontested testimony of the Landlord B.N and the witness, I am satisfied that the Tenant was personally served with the One Month Notice on July 14, 2020. I also note that this is the date the Tenant gave in the Application for having received the One Month Notice.

Based on the uncontested and affirmed testimony of the Landlords in the hearing, and the Landlords documentary evidence, I am satisfied that 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 and that the Landlords therefore had the grounds to serve the One Month Notice pursuant to section 47 (1)(d)(i) of the Act. As a result, I dismiss the Tenant's Application seeking cancellation of the One Month Notice and recovery of the filing fee without leave to reapply.

As the copy of the One Month Notice provided for my review by the Landlords is in writing, is signed and dated, gives the address for the rental unit, states the grounds for ending the tenancy and is in the approved form, I therefore find that it complies with

section 52 of the *Act*. Pursuant to section 55 (1) of the *Act*, I therefore grant the Landlord B.N., who is the respondent in the Application, an Order of Possession for the rental unit effective August 31, 2020, which is the corrected effective date for the One Month Notice pursuant to sections 47 (2) and 53 of the *Act*.

### 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 **1:00 P.M. on August 31, 2020**, 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: August 25, 2020

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Residential Tenancy Branch