



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

On July 23, 2020, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a One-Month to End Tenancy for Cause (the “Notice”) issued July 17, 2020, and to recover the filing fee for this application. The matter was set for a conference call.

The Landlord, the Landlord husband (the “Landlord”) and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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 to be Decided

- Should the Notice, issued July 17, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the return of their filing fee?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties testified that the tenancy began on September 27, 2018, with the Tenant currently paying rent in the amount of \$1,300.00. The parties also agreed that at the outset of the tenancy, the Tenant paid a \$650.00 security deposit to the Landlord. The Landlord testified that there is no written tenancy agreement for this tenancy.

The parties testified that the Landlord served the Notice to end tenancy to the Tenant on July 17, 2020, by personal service. Both the Landlord and the Tenant provided a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- Tenant or a person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord
- *Tenant or 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 or the Landlord*

The Notice states that the Tenant must move out of the rental unit by August 31, 2020. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenants are presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that they had issued the Notice to End tenancy because they believe the Tenant is using drugs on the rental property and associating with a local drug dealer.

The Landlord testified that on the evening of June 26, 2020, the Tenant had gotten into an incident with their son in the rental unit, which caused a lot of loud banging and the police to attend the rental unit. The Landlord testified that later that evening, they received a text message from the Tenant's son, asking them to check on the Tenant as the Tenant had started using drugs again, and the son expressed concern over their

welfare. The Landlord submitted the text message conversation with the Tenant's son into documentary evidence.

The Landlord testified that on July 11, 2020, they had seen, through the window of the Tenant's rental unit, the Tenant's daughter hunched over sitting in a chair at a table. The Landlord's testified that it was obvious that the Tenant's daughter was passed out from drug use.

The Landlord also testified that they have witnessed the Tenant going into a known drug house, located two doors down from the rental unit and that they had seen the Tenant speaking to a know drug dealer on the street. Additionally, the Landlord testified that they had witnessed the Tenant sitting in a van on the street, doing what they assumed to be drugs inside the van. When asked by this Arbitrator if the Landlord had personally witnessed the Tenant using drugs, the Landlord answered no, but why else would you sit in a van on the street or visit a drug house. The Landlord submitted eight videos into documentary evidence.

The Tenant testified that they do not use drugs and that they do not let their guests use drugs in the rental unit or on the rental property. The Tenant testified that they agreed that they have been in the house that the Landlord claims is a "drug house," but that it was not to visit this dealer the Landlord mentioned in their testimony. The Tenant stated that there is more than one unit in that house and that a friend of theirs, not this drug dealer, lives in a separate unit, and they visit them occasionally.

The Tenant also testified that they had been sitting in a van on the public street, with their daughter talking, but that they had only done that because the Landlord had demanded that their daughter not visit them in the rental unit.

As for the incident with the Tenant's son, the Tenant testified that they had been out drinking with friends that night, and when they got home had passed out in the bathroom. When they awoke, their son was there and had punched the Tenant in the face. The Tenant testified that they called the police, and the police had taken their son away. The Tenant again testified that they were not using drugs.

### Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant received the Notice to End Tenancy on July 19, 2020. Pursuant to section 47 of the *Act*, the Tenant had ten days to dispute the Notice. I find the Tenant had until July 29, 2020, to file their application to dispute the Notice. The Tenant filed their application on July 17, 2020, within the statutory time limit.

The Landlord indicated two reasons on the Notice as the cause for ending the Tenant's tenancy; however, they acknowledged that both the reasons stem from the same issue. The issue being that the Landlord believes that the Tenant is using drugs in the rental unit.

During this hearing, I find that the parties offered conflicting verbal testimony regarding the claim that this Tenant has been using drugs in the rental unit. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, it is the Landlord who holds the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice they issued, over and above their testimony.

I have reviewed all of the evidence submitted by the Landlord, and I find that there is no evidence before me to show that this Tenant has been using drugs in the rental unit or anywhere on the rental property.

Overall, I find that the Landlord has not proven sufficient cause, to satisfy me, to terminate the tenancy for any of the reasons indicated on the Notice they issued. Therefore, I grant the Tenant's application to cancel the Notice issued July 17, 2020, and I find the Notice has no force or effect. This tenancy will continue until legally ended in accordance with the *Act*.

Although, after viewing the videos submitted into documentary evidence by the Landlord, I am compelled to make a record of my deep concerns regarding the Landlord's behaviour towards this Tenant depicted in these videos. Specifically, I noted two breaches of the *Act* commit by the Landlord in these videos. The first breach I noted was to the Tenant's right to reasonable privacy. One recording shows the Landlord admitting that they had been looking through the windows of the rental unit, at the

Tenant's guest. Several other videos show that the Landlord has been making a record of the Tenant's comings and goings to the rental unit as well as the Tenant walking down a public street and sitting in a private vehicle on public property. Section 28 of the Act requires that a landlord provide reasonable privacy to their tenant.

***Protection of tenant's right to quiet enjoyment***

**28** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

I find that the actions of this Landlord, of looking through the windows of the rental unit, recording the Tenant in a vehicle, and recording the Tenant walking down the street, to be an unreasonable and disturbing breach of this Tenant's right to privacy.

The second breach I noted was to this Tenant's right to have guests in the rental unit. This Landlord is clearly recorded as demanding that the Tenant's daughter leave the property and not come back. Section 30 of the Act states the following regarding a tenant's right to have guests in the rental unit.

***Tenant's right of access protected***

**30 (1)** *A landlord must not unreasonably restrict access to residential property by*

- (a) the tenant of a rental unit that is part of the residential property,*
- or*
- (b) a person permitted on the residential property by that tenant.*

I find that the actions of this Landlord, of demanding that the Tenant's daughter leave and not attend the rental unit again, to have been a breach of section 30 of the Act, and this Tenant's right to unrestricted access to the rental unit.

As my review of this evidence brought these breaches to my attention, I find that I must address these breaches in my Decision for this hearing. Accordingly, I order the Landlord to comply with sections 28 and 30 of the Act, by respecting this Tenant's right

to privacy and by removing all restrictions on this Tenant's right to have guests in the rental unit. I also strongly encourage this Landlord to obtain legal advice regarding their obligations and responsibilities as a landlord operating in the province of British Columbia.

These parties were also advised of the existence of the Compliance and Enforcement Unit of the Residential Tenancy Branch, and the possibility of Administrative Penalties for non-compliance with the Residential Tenancy *Act*.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in their application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. The Tenant is granted permission to take a one-time deduction of \$100.00, from their next month's rent in satisfaction of this award.

### Conclusion

The Tenant's application to cancel the Notice, issued July 17, 2020, is granted. The tenancy will continue until legally ended in accordance with the Act.

I grant the Tenant permission to take a one-time deduction of \$100.00 from their next month's rent.

I order the Landlord to comply with sections 28 and 30 of the *Act*.

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 31, 2020

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Residential Tenancy Branch