



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on August 4, 2020. The landlord stated that although she received the tenant's documentary evidence late, there are no issues in proceeding with the hearing.

The landlord stated that the tenant was served with the submitted documentary evidence posted to the rental unit door. The tenant confirmed receipt of the landlord's evidence submission.

Extensive discussions with both parties resulted in the tenant's request for an order for the landlord to comply being dismissed with leave to reapply. The tenant confirmed that this request was unrelated to the issue of the 1 month notice. Rule 2.3 of the Rules of Procedure were explained to both parties and his request was severed. The hearing shall proceed on the tenant's request to cancel the notice to end tenancy (CNC) and recovery of the filing fee (FF).

Further discussions took place in which the tenant stated that an amendment to the application for dispute was filed. The tenant seeks to add a claim to dispute a second notice to end tenancy issued by the landlord. A review of the tenant's file, evidence submission and documents do not reveal a filed amendment. The landlord stated that she did receive the amendment to the application for dispute. An attempt at resolving the issue of a missing amendment was made. The tenant stated that he did not submit a copy of the second Notice to end Tenancy for Cause. Detailed discussions with both parties over the contents of the second notice to end tenancy were made. Both parties agreed that the notice to end tenancy for cause was dated July 28, 2020 and was served to the tenant on July 28, 2020 posted to the rental unit door. Both parties agreed that the effective end of tenancy date was August 31, 2020. The landlord confirmed that the second notice had 4 reasons for cause listed as:

- 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 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.
- Breach of a Material Term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant argued that there was only one reason for cause listed. The tenant was unable to provide any details of the reason selected on the Notice despite several attempts by the Arbitrator to rectify this issue.

Section 47 of the Act states that a landlord may end a tenancy by giving notice to end the tenancy for a number or reasons. In this case before me neither party has supplied a copy of the One Month Notice to End Tenancy for Cause dated July 28, 2020. A portion of the hearing was spent explaining the crucial and vital nature of this document to both parties. The Notice is not a trivial piece of information. It is the foundation that a landlord relies on to assist in ending a tenancy. In this case, the tenant filed an amendment. This was not found during the hearing, but later. The tenant did not submit a copy of the One Month Notice for Cause that he seeks to cancel. Neither party could agree as to the contents of the reasons for cause listed on the Notice. The tenant is entitled to have full answer and defence of any allegation made against them as is required under the Natural Laws of Justice.

As such, I find that without a copy of the second Notice to End Tenancy for Cause and without both parties in agreement to the contents of that Notice, the tenant's amendment to add the dispute of a second notice to end tenancy is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

The hearing was commenced regarding the tenant's original application to dispute the first notice to end tenancy and recovery of the filing fee only.

After 66 minutes past the start of the scheduled hearing time, the application was adjourned due to a lack of time.

On October 13, 2020 the hearing resumed with both parties. I accept the evidence of both parties and find that both parties have been sufficiently served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act.

#### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?  
Is the tenant entitled to recovery of the filing fee?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on February 1, 2014 on a fixed term tenancy until January 31, 2014 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated January 20, 2014. The monthly rent was \$1,200.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$600.00 was paid on February 1, 2014.

Both parties confirmed the landlord served the tenant on July 20, 2020 with the 1 Month Notice dated July 20, 2020 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of August 31, 2020 and that it was being given as:

- the tenant or 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; or
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The details of cause listed are:

*Tenant cause a significant amount of water to flood the suite to the point it has cause damage to his suite and the suite below. The tenant has impleaded attempts to obtain quotes to repair the damage. As well as blocked all attempts to repair the damage he caused in his unit.*

*Multiple letters of warning and a caution notice have been issued. As a result, tenant has continued to fail to cooperate.*

[reproduced as written]

The tenant provided written details which states, the "notice to end tenancy is unlawful", but has not provided any written details in his application for dispute.

The landlord stated that a leak occurred on May 27, 2020 from the tenant's air conditioning unit; on July 6, 2020 the tenant gave access to the rental unit as per a notice of entry, but refused to comply with the landlord's request to access the affected floor space by moving his furniture. The landlord followed up by issuing a caution notice on July 10, 2020 for the tenant to comply or that non-compliance could result in the tenancy ending. The landlord also issued a new notice of entry on July 10, 2020 for July 17, 2020. The tenant allowed entry to the landlord and her contractors but did not comply by moving his furniture out of the way. The landlord stated that on July 20, 2020 a letter was served to the tenant detailing the tenant's non-compliance and the landlord's decision to issue a notice to end tenancy. The landlord served the notice to end tenancy dated July 20, 2020.

The tenant stated that the landlord wants the tenant to pay for new flooring. The tenant stated that there is no damage to the flooring from the water leak. The tenant stated that he notified the landlord that there is no space to move his furniture to allow the landlord access to inspect the floor.

The landlord argued that the rental is 600 sq. ft and the bedroom flooring area is 161 sq. ft. The landlord explained that the tenant was requested to remove his furniture from the bedroom to allow the contractors to inspect and repair the floor. The landlord acknowledged that the tenant would be inconvenienced, but that the repair of the floor

was necessary. The tenant argued that his bedroom is 300 sq. ft. and approximately ½ of the entire space. The tenant also argued that the repair of the floor could be made from the ceiling of the other affected room below.

The landlord referred to the submitted copy of an estimate to repair and replace the flooring in the bedroom. The landlord stated that the estimate of the affected area is 160 sq. ft.

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, I accept the undisputed affirmed evidence from both parties that the landlord served the tenant with the 1 month notice dated July 20, 2020 posted to the rental unit door.

I find on a balance of probabilities that the landlord has established a claim that the tenant is “non-complying” with the landlord’s request to inspect and repair the flooring in the bedroom. The landlord has claimed that the tenant has refused to comply with her request to give access to the bedroom of the rental to allow the landlord’s contractors access to inspect and repair the vinyl plank flooring. The landlord claims that although the tenant gives access to the unit, the tenant has not removed his furniture from the affected area of the bedroom for the contractors to inspect and repair. The tenant has argued that there is no damage to the floor. The tenant has also argued that he has no space to move the furniture and that the landlord was notified. The landlord argued that the tenant’s bedroom furniture occupy a 161 sq. ft. bedroom area and that the entire rental unit is 600 sq. ft. The landlord argues that there is sufficient space on a temporary basis with some inconvenience to the tenant. The tenant has argued that there is no place for him to sleep. Despite these claims by the tenant, I find that the landlord has made a reasonable request for her contractor to inspect and repair if necessary the flooring due to the tenant’s leaking air conditioner. As such, the tenant’s request to cancel the notice to end tenancy is dismissed. The landlord’s notice is upheld.

Pursuant to section 55 of the Act, the landlord is granted an order of possession to take affect 2 days after it is served upon the tenant as the effective end of tenancy date of September 30, 2020 has now passed.

Conclusion

The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the 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: October 13, 2020

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Residential Tenancy Branch