



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the Landlord: OPC, MNRL-S, FFL

For the Tenant: CNR-MT, CNE, RR, RP, OLC, MNRT

### Introduction

This hearing dealt with cross-applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenant applied for the following:

- To dispute the 10 Day Notice to End Tenancy for Unpaid Rent dated September 2, 2020 ("10 Day Notice"); and
- For more time to apply to dispute the 10 Day Notice;
- For an Order to cancel a One Month Notice to End Tenancy for Cause or End of Employment dated August 4, 2020;
- To reduce rent for repairs, services or facilities agreed upon, but not provided;
- For repairs to be made to the rental unit, site or property that have not been completed;
- For an Order for the Landlord to Comply with the Act or tenancy agreement;
- For \$4,000.00 compensation for monetary loss or other money owed; and
- For reimbursement of \$850.00 for the cost of emergency repairs.

The Landlord applied for the following:

- For an Order of Possession for Cause, based on a One Month Notice to End Tenancy for Cause dated August 4, 2020 ("One Month Notice");
- For a monetary order for unpaid rent for the Landlord, retaining the security deposit to apply to this claim; and
- To recover the \$100.00 cost of his \$100.00 Application filing fee.

The Tenant, M.L., the Landlord, C.G., and an agent for the Landlord, K.L. (the "Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the

hearing process. One witness for the Tenant, D.S. (the Tenant's husband), ("Witness"), was also present and provided affirmed testimony.

During the hearing the Parties were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

In describing the hearing process to the Parties, I advised them that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

### Preliminary Matters

Prior to the Parties testifying at the hearing, I advised them that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. I said that in this case, the Tenant indicated a number of different matters of dispute in her application, the most urgent of which are the applications to set aside the eviction Notices. I find that not all the claims on the Tenant's application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenant's request to set aside the One Month Notice and the 10 Day Notice, and the Tenant's request for more time to apply to cancel the 10 Day Notice.

I also said I would consider the Landlord's application for an Order of Possession for Cause, based on the One Month Notice, and his claim for recovery of his \$100.00 Application filing fee. I said I found the Landlord's application for unpaid rent to have issues involving rent being withheld for repairs, which I find are not related to the One Month Notice - the Landlord's other application. Therefore, I determined that I would not consider that claim in this proceeding. Accordingly, the Parties' other claims are dismissed, with leave to re-apply.

The Tenant testified that her application for more time to cancel the 10 Day Notice was made in error. I found that she was not out of time when she applied for dispute

resolution in this regard.

Near the end of the hearing, the Agent and Landlord agreed that I should dismiss the 10 Day Notice, because the Landlord's critical issues are addressed with the One Month Notice. The Agent said that the Tenant had repaid most of the outstanding rent owing, two days after the 10 Day Notice was served. She said that the other amount related to funds withheld for repairs the Tenant had made or arranged. Based on the evidence and testimony in this regard, I, therefore, dismiss the 10 Day Notice with leave to reapply.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

#### Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to receive an Order of Possession?
- Is the Landlord entitled to recovery of his \$100.00 Application filing fee?

#### Background and Evidence

The Parties agreed that the fixed term tenancy began on April 1, 2020 and runs until March 31, 2021. They agreed that the Tenant pays the Landlord a monthly rent of \$1,975.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$987.00, and no pet damage deposit. They agreed that the Landlord still holds the security deposit.

In the section on the One Month Notice labelled: "Details of Cause(s)", the Agent wrote:

- significant disturbance to downstairs tenants,
- failure to disclose husband would be living in home who would be under 24 hour house arrest with police checks at any time causing concern for tenants in lower suite May 5, 2020
- gave notice of unauthorized persons to reside in home and late rent May 8/20
- tenant made complaints which were dealt with once provided to property manager – May 28/20.

- complaints about safety, fighting with partner upstairs, stated she would be moving out May 28/20
- has a dog which was not disclosed on application, or permission requested, no pet deposit paid. July 2020.
- threatened to take to RTB, won't communicate with property manager and then when does makes a list of issues July 2020.

## **LANDLORD'S CLAIM**

### **#1 VALIDITY OF THE ONE MONTH NOTICE**

The Landlord served the Tenant with a One Month Notice that was signed and dated August 4, 2020. It has the rental unit address, it was served by leaving a copy in the mailbox or mail slot of the rental unit, and it has an effective vacancy date of September 4, 2020, automatically corrected to September 30, 2020 by section 53 of the Act. The ground that was checked on the One Month Notice as the reason for the eviction is that: "The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord."

The Agent said that the reason I should confirm the One Month Notice is:

There's been significant disruptions in the house with police interventions in the night, and a 24-hour arrest, which caused severe disruptions in the house. There are other things, like having dogs without permission, accusations of not repairing property – it's a very disruptive situation. The downstairs tenant has since left.

We still want the 30 day to vacate. We have serious concerns with the property, like trying to get things maintained without interference, and to get painting done, but staff won't go back there to do repair work. There are two dogs in the house that are not approved.

The Agent referred me to a timeline she submitted to the RTB. Within this timeline, the Landlord has listed the activities in the tenancy, such as:

20 03 24

- Gave permission to [the Tenant] to pick up key prior to tenancy start date to have furniture delivered.

- Also gave move in condition report for [the Tenant] to document any items of concern.

20 03 26

- [the Tenant] doing laundry at the house and washing machine filling with water and not draining.
- Agent contacted [repair company] to fix.

20 03 27

- Washing machine was repaired by [repair company].

20 03 31

- Agent sent all agreements to tenant and landlord

20 04 04

- [the Tenant] requested having items moved out of her portion of the storage unit in garage completed April 22, 2020

20 04 22

- Agent obtaining quotes to repair retaining wall on upper level along side [the Tenant] portion of the yard, replace retaining wall on lower level, gate repairs, and fencing

. . .

20 05 04

- Received call from downstairs tenant about RCMP doing door check on [the Tenant's] husband now at the house under 24-hour house arrest
- Spoke with [the Tenant] regarding the situation, failure to disclose marriage and that husband was incarcerated
- [the Tenant] advised that he has a 9-month sentence and did not think he would be out while renting the house, however, [the Tenant] signed a 1-year lease agreement
- Agent contact RTB to find out what could be done and actions that could be taken during COVID restrictions. Advised to send a Warning Letter to end tenancy when able for misrepresentation on the rental application and causing interference with the downstairs tenants right to enjoyment of the property.

20 05 08

- Agent sent Letter of Warning by email and mail.

The Agent said: “We would not be able to fill the vacant space downstairs under the current situation. It’s putting the Landlord at a bit of a risk.”

The Tenant said:

She’s saying the police checked at all hours – that happened once. The tenants that were in the basement partied non-stop. They had people watch their place who were minors, and who also had people come in all hours of the night.

As far as the maintenance, painting a cracked deck is not fixing it. I was interfering with her friend doing the maintenance? He texted me the other day to see when he could come back to paint. The neighbours are complaining about the retaining wall. It should have been repaired a long time ago. The repairs are not made. They had their driveway fixed, spending more money to fix driveway, while retaining wall is coming down again.

When asked how the Tenant interfered with maintenance work being done, the Agent said:

We had [T.P. Maintenance] to do the deck work, and when he could get some work done, [the T.P. Maintenance personnel] would contact [the Tenant] and be told ‘it’s not a good time’. He went to paint and [the Tenant] said not to paint the cabinets in the garage until after this RTB hearing. He didn’t feel like he wanted to be involved in these issues.

Regarding the retaining wall, we did the lower retaining wall in the backyard, and had also contracted him for the retaining wall for the upstairs suite. [The Tenant] said it was not necessary, because her and the neighbour did it. When [D’s Handyman service] came along and saw it – it’s not bad, but it’s not perfect – it’s not professionally done. He had been told not to bother.

Regarding the complaints between the tenants – we only received one complaint from [the Tenant] when the downstairs unit was being watched, while those tenants were away. Why not report other issues? She said she wants to keep me out of it. She will only communicate with [C.G.], because she says I always harass her. She had sent me information that she was not to talk to me, and only to communicate through [C.G.], and he explained that everything goes through me. I have only communicated with her in May, and once in July, a few times in August, to get the deck done, and several back and forth, and in September when we started the proceedings for termination of the lease. A few situations

since April - notice of warning, per RTB, because we couldn't end the tenancy then.

The Witness, D.S., testified as follows:

I was present on the first call when [the Tenant] tried to add me to the lease. I was released. There was one curfew check. I don't believe the downstairs neighbour – she texted me in the morning and was very rude. I had left my phone number for them to call, if there were any noise issues. They were frivolous noise issues, which snowballed. I don't know [the Agent], I don't know [the Landlord], personally; I'm a very forthcoming person. I personally had asked my wife to add me to the lease.

[The downstairs tenant] said that the police curfew check raised serious concerns for her, she said her husband did time in jail. She said she had a criminal past, too, so it didn't seem to be an issue. Then they complained to [the Agent], which resulted in enormous harassment. I've done my own RTB and HR processes on this. I was hopeful that we would get a stop-discrimination order for [the Agent] by now.

The early invasive curfew checks were invasive. We've asked them not to do them at this time. We can't do anything to stop them, though. We were very polite with neighbours and with [the Agent]. The (lower) tenant took great issue with me being there.

The Agent said:

At no time was I requested to add [D.S.] to the lease. When she filled out the lease, she said she was not married and was a single parent. There was no husband, let alone one who was incarcerated. I probably would not have proceeded with the tenancy. It's not the environment we wanted to create. Until today, I didn't even know what her partner's name was.

In terms of harassment, I told [the Tenant] it was very disruptive to have 24-hour checks from police. And the issues of not disclosing her personal situation. The RTB said to issue a warning letter.

I received two complaints re the police check. The first happened at the beginning of May when Covid hit and [the Tenant] had told me that they were

releasing people who were under house arrest. At that time, I asked for her husband's name and she told me that was none of my business. I said we can't have police checks in the middle of the night. It wakes up the house, the children. A few weeks later we had another complaint. After that I believe the police picked up [D.S.] and put him in the correctional facility.

He was to be included on the original tenancy agreement, and he was not on the Application form. There was no mention of him until he was released. It seemed odd.

The Witness said:

My wife wasn't aware of my release. I was scheduled for some hearings, but due to Covid, the hearings were pushed . . . I was released due to Covid. I was released again because the charges were false. It is highly discriminatory – not the type of environment – discriminating against me, because I have a criminal record. The basement tenants said they have been incarcerated, too.

I left because of the harassment. My wife is sick with cancer. The stress was eating her alive. The police did one curfew check. I left the residence and turned myself in; I couldn't have my wife go through the pain and agony. I heard on speaker phone, I heard her say to my wife that I had to leave, that I was not on the lease. She outright stated that he is not to be at that house. I heard these comments by [the Agent]. My wife became so upset that she cried. At no time was anyone trying to fool [the Agent]. We were forthcoming in the circumstances in poor circumstances

The Landlord said:

Basically, with this rental property, my wife and I want to provide a safe, warm, and dry place that tenants can call their home. We like to have a great relationship – through property manager - because of her people skills and her knowledge of managing rental properties. I had called many companies to find the right person stop work for us. We found that [the Agent] was ideal, she had referrals. We like to provide a good property, but we expect full cooperation with the Landlord.

Here [the Tenant] had not cooperated – the thing about fixing the upper retaining wall – it was to be done professionally. Lately, preventing the storage cupboards

from being painted. [The Agent] said to come back after today, but it could have been done by now. Bringing in a dog, late three times in the rent for six months, her husband moving in, which is not in the agreement. We want to resolve this amicably.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 47 of the Act allows a landlord to end a tenancy for cause:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

. . .

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

. . .

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, the Landlord alleged that the Tenant significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, because the Tenant's husband was released from prison and placed on 24-hour house arrest with police checks at the rental unit.

I find the Landlord is alleging that the presence of the Tenant's husband in the rental unit has interfered with the lower tenants' entitlement to quiet enjoyment of their suite.

According to RTB Policy Guideline 6:

## **B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT**

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

[emphasis added]

Based on the evidence before me overall, I find that the presence of the Tenant's husband in the rental unit may have caused the other tenants in the residential property some disturbance and concern. However, I find that the evidence indicates that the police checked on the Tenant's husband only once since he moved in. Further, the Tenant's husband said he turned himself into the police, because he and the Tenant felt harassed by the Agent about his presence there. The Tenant's husband no longer lives in the rental unit; therefore, the reason for the ground of the One Month Notice no longer exists.

I find that the Landlord has not provided sufficient evidence to establish that the Tenant and/or her husband caused the other tenants or the Landlord frequent and ongoing interference or unreasonable disturbance, such that the Tenant significantly interfered

with or unreasonably disturbed another occupant or the Landlord of the residential property.

I find that this set of circumstances includes the presence of the Covid state of emergency in British Columbia. I find it is common knowledge that as part of this emergency, some prisoners were released from incarceration to protect them from possible infection. I find that the Tenant had no way to anticipate this happening when she signed the tenancy agreement. As such, I find her action in not including her husband on the rental application form was in no way dishonest or calculated. I find that the mere presence of someone accused of a crime who is on 24-hour house arrest or who has spent time in prison is not a basis to end a tenancy under the Act.

Further, I find that the Agent's and the Landlord's focus on the Tenant's request for repairs as being troublesome is inconsistent with a Landlord's obligation to maintain the residential property premises pursuant to section 32 of the Act. Section 32 states:

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

...

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Accordingly, I find that the Tenant's request for repairs is not a basis for ending a tenancy.

Further, while the Tenant is encouraged to be as cooperative as possible with the Agent, the Landlord, and maintenance personnel, the evidence before me is that the Tenant has cancer and suffers from the discomfort associated with the treatment and recovery process. I find it understandable and reasonable that she might have to decline maintenance personnel access to the rental unit on some such occasions. The Landlord expressed his wish to provide tenants with "...a safe, warm, and dry place that tenants can call their home." I find it is more likely than not that this is all the Tenant seeks in this tenancy.

When I consider all the evidence before me overall, I find that the Landlord has provided insufficient evidence to meet his burden of proof on a balance of probabilities, and to support the validity of the One Month Notice. I find that the Landlord has not established a ground for ending the tenancy, based on the One Month Notice. I, therefore, cancel the One Month Notice and declare that it is now void and of no force or effect. The tenancy will continue until ended in accordance with the Act.

### Conclusion

The Tenant is successful in her Application to cancel the One Month Notice. I cancel the One Month Notice and find that it is invalid and of no force or effect. The Landlord's application for an Order of Possession for Cause is dismissed without leave to reapply, pursuant to section 62 of the Act.

The Tenant's other claims are dismissed with leave to reapply, other than the claim to cancel the 10 Day Notice dated September 2, 2020. The 10 Day Notice is dismissed without leave to reapply, pursuant to the agreement of the Parties in the hearing, as noted above.

The Landlord's application for a monetary order for unpaid rent is dismissed with leave to reapply.

This Decision does not extend any time limits under the Act.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 20, 2020

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Residential Tenancy Branch