



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC, OLC, FFT**

### 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 that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent and counsel. The tenant was assisted by friends who also acted as an interpreter.

As both parties were present service was confirmed. The parties each confirmed receipt of the materials. Based on the testimonies I find each party duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the parties agreed that the agent of the corporate landlord was incorrectly identified as the respondent and it should be the corporate entity. With the consent of the parties the style of cause was amended.

### Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to recover the filing fee from the landlord?

### 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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in February, 2019. The rental unit is a suite in a multi-unit building with 54 suites intended mainly for seniors. The tenancy agreement provides that smoking is not permitted inside the building.

The landlord submits that throughout the course of the tenancy the tenant has been smoking in the rental unit causing disturbance to their neighbors. The landlord submitted into evidence numerous written complaints from a neighbor about the second hand smoke emanating from the rental unit. These complaints span a period of several months. The landlord submits that they issued written and verbal warnings to the tenant and provided evidence of the correspondence. The landlord submits that as the tenant's disturbance of the other residents of the building continued, they issued a 1 Month Notice dated September 9, 2020.

The reasons given on the 1 Month Notice for the tenancy to end are

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

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*

The tenant testified that they recall smoking in the rental unit on only 8 occasions during the tenancy. The tenant explained that they would normally smoke outside of the building but on 8 occasions they were ill and could not leave the rental unit to smoke. The tenant submits that the complaints arise from a particular neighbor with whom they have a difficult relationship. The tenant submits that their conduct and behaviour has not caused significant interference or unreasonable disturbance.

### Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate 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 or seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Based on the totality of the evidence I am satisfied that the landlord has met their evidentiary onus. I accept that the tenant has smoked in their rental unit on a number of occasions and this has caused disturbance to other residents of the building. While the tenant submits that they only smoked in the rental unit on 8 occasions, I find this is sufficient to be considered an unreasonable and significant disturbance. One instance may be due to unawareness of the rules or impact on others, two instances may be a mistake but to continue the offending behaviour for an additional six times, after being issued verbal and written notices of the breach, is unreasonable.

While the tenant's explained that they chose to smoke in the rental unit only on days when they felt ill and unable to venture outside, a tenant is not permitted to cause disturbance and interference based on their health on a given day. I find the tenant's submission that there has been an ongoing unfriendly relationship with the reporting neighbor to be irrelevant as the underlying relationship does not negate the disturbance caused by smoking in the rental unit.

I find that the tenant's conduct, in continuing to smoke inside of the rental unit on a number of occasions after being issued warnings, to be a source of unreasonable disturbance and significant interference with the other occupants of the building. I further find that the act of smoking and producing second-hand smoke is a serious jeopardy to the health and safety of other occupants, especially taking into account their age and relative health.

Based on the foregoing I am satisfied that the landlord has established on a balance of probabilities the reason for this tenancy to end. I find that the landlord has provided sufficient evidence to demonstrate that there is cause for issuing the 1 Month Notice and consequently dismiss the tenant's application.

Section 55(1) of the *Act* reads as follows:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession, and*

*(b) the director dismisses the tenant's application or upholds the landlord's notice.*

The landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. The notice clearly provides the reasons for ending the tenancy.

Accordingly, I issue an Order of Possession in the landlord's favour. As the effective date of the notice has passed, I issue an Order enforceable 2 days after service on the tenant.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: November 10, 2020

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Residential Tenancy Branch