



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, 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);
- An order that the Landlord comply with the Act, regulations, or the tenancy agreement; 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 Tenant, two witnesses for the Tenant F.M. and L.D., an assistant for the Tenant D.W., the Vice President of the housing society named as the Landlord, an advocate for the Landlord (the Advocate), and two employees of the Landlord F.S. and R.M., one of whom (R.M.) provided witness testimony. All testimony provided was affirmed. Although the Advocate stated that the Landlord was not properly served with the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, or the Tenant's documentary evidence, within the timelines set out in the Act, they acknowledged personal receipt by the President of the housing society named as the Landlord in the Application on October 18, 2020, and requested that the hearing proceed as scheduled so that the matter could be resolved without further delay to either party.

Based on the above, the hearing therefore proceeded as scheduled. As the parties also acknowledged receipt of each other's documentary evidence and neither party raised arguments that the evidence should be excluded, I have accepted all of the documentary evidence before me from both parties for consideration. The Parties were

provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the hearing.

### Preliminary Matters

Witnesses were excluded from the proceedings until after they had provided their testimony for my consideration and the parties had both had an opportunity to cross-examine them.

### Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice and an Order for the Landlord to comply with the Act, regulations, or tenancy agreement?

If the Tenant's Application is dismissed or the One Month Notice is upheld, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The parties agreed in the hearing that the Tenant rents a room in a home where common space, such as a kitchen, is shared with other tenants of the Landlord. The parties were also in agreement that the tenancy is covered by the Act. A copy of a document titled "RESIDENT'S AGREEMENT" was submitted for my review, which I will refer to as the tenancy agreement throughout this decision, along with a document titled "SPONSOR'S LETTER". As the parties continually referred to the "SPONSOR'S LETTER" as the Sponsor Agreement, I have also referred to it as the Sponsor Agreement throughout this decision.

The parties agreed that the tenancy began on February 7, 2020, that rent in the amount of \$1,690.00 is currently due on the first day of each month, which also includes the

provision of food, and that a security deposit in the amount of \$400.00 was paid at the start of the tenancy.

The Advocate stated that although there has been a long history of unacceptable behaviour by the Tenant on the residential property, dating back to 2015, a recent escalation in unacceptable behaviour by the Tenant causing unreasonable disturbances to the Landlord's employees and other occupants, as well as several instances of significant interference with the Landlord's employees and other occupants, resulted in the issuance of the One Month Notice. The Advocate stated that a one page letter, the One Month Notice, and a document titled "Attachment A" were personally served on the Tenant by the President of the society named as the Landlord (the President) on September 22, 2020, and the Tenant confirmed receipt on that date and in that manner during the hearing.

The One Month Notice in the documentary evidence before me is signed and dated September 22, 2020, has an effective date of October 31, 2020, and states that the reason for the issuance of the One Month Notice is because the Tenant or a person permitted on the residential property by the Tenant has significantly interfered with or unreasonably disturbed the Landlord or another occupant of the residential property. Significant details were provided in the details of cause section of the One Month Notice and "Attachment A" for issuance of the One Month Notice, such as threatening and aggressive behavior, instances of medication misuse, interference by the Tenant in first-aid matters, and inappropriate comments and behavior about and towards staff.

The Advocate for the Landlord provided an overview of behaviour by the Tenant since 2015 which they find to be inappropriate, such as a threat of physical harm to another occupant in 2015, and medication overuse in 2018, resulting in disturbances to staff and other occupants, as well as ongoing behavior towards staff and other occupants of the residential property which they described as inappropriate, threatening, and aggressive. They stated that the Tenant's behavior has resulted in complaints of bullying by staff and other occupants and that the Tenant's behavior has interfered with and disturbed both the Landlord's employees and other occupants of the property to such a degree, that the Tenant's continued occupancy at the property is no longer tenable.

In support of this position the Landlord submitted the following documents:

- A letter dated October 6, 2020, from the President;
- A letter dated February 23, 2015, regarding a threat of physical harm with a shovel uttered by the Tenant to another occupant;

- A letter dated November 28, 2018, regarding repeated overuse of medication which has rendered the Tenant unable to speak or care for themselves on several occasions;
- A letter dated July 23, 2020, outlining property procedures for first-aid incidents, confirming that building alarms had been tested and are in working order, clarifying the Landlord's right to refuse tenant requests for the purchase of items for the property, and advising the Tenant that staff performance is to be monitored by the Landlord, not tenants themselves. The letter also warned the Tenant that if they continue to interfere in medical situations of other occupants and engage in upsetting, bullying or inappropriate behavior their tenancy will be terminated;
- Complaint letters regarding the Tenant's behavior towards staff and other occupants from two staff members (R.J. and F.S.), an independent contractor who works for a number of occupants of the building, three occupants of the residential property, the President, and a family member of one of the occupants of the residential property;
- Attachment A describing the Tenant's history of inappropriate behavior and outlining why the One Month Notice has been served.

In the complain letters the authors stated that the Tenant uses inappropriate language, is aggressive, has uttered threats, uses offensive language and makes offensive remarks about and towards staff, and generally referred to the Tenant's behaviour towards staff and other occupants of the residential property as bullying, aggressive, intimidating, and toxic. R.M. also provided testimony in the hearing regarding the Tenant's behavior towards them and the significant negative impact it has had on them and other occupants of the property.

Although the Tenant and the Witness F.M. called into question the accuracy and veracity of two documents submitted on behalf of the Landlord, one of which was a statement from an occupant of the building with a signature but no printed name and one of which was the statement from a family member of one of the occupants of the residential property, and denied that the Tenant had ever threatened anyone with a shovel, ultimately the Tenant acknowledged that some of their past behavior was not appropriate but argued that the tenancy should not end as they now have more appropriate supports in place and no further complaints have been received against them since the One Month Notice was served. A medical professional who works with the Tenant appeared in their support at the hearing and acknowledged that they, and several other medical professionals are able to better support the Tenant moving forward. Letters from two medical professionals who work with the Tenant were

submitted in support of this position stating that the Tenant's mental health is stable, that the Tenant is actively involved in treatment, and that the Tenant is of sound mind with no need for psychiatric treatment. The Letters also indicated that the Tenant's continued residency in stable shared accommodation is crucial to his well being and that the loss of such housing will place the Tenant's mental health in serious jeopardy.

The Witness L.D. who works as an independent contractor for various occupants of the residential property appeared at the hearing and provided a character reference for the Tenant stating that they have known the Tenant for 10 years, that the Tenant is a good person, and that they only ever hear good things about the Tenant from other people. The Witness F.M. also provided testimony that the Tenant is a good person, pays their rent on time, is helpful and honest, and will have difficulty securing suitable alternate accommodation as they cannot do things such as cook for themselves.

Overall the Tenant's arguments and the submissions and testimony of those there to support them focused on their recent recognition that their past behavior was inappropriate and needed to change, their commitment to changing this behavior, the increase in supports now available to them, and the lack of suitable alternative housing available for them either in general or upon short notice, their general good character, and their lack of other tenancy related issues such as late payment of rent.

In support of the Tenant's position that the One Month Notice should be cancelled the Tenant submitted a draft agreement authored by one of their medical professionals stating that they will adhere to the rules of the residence, will not interfere with policies and procedures put in place by management, will be checked in on every 2 weeks, or in between as needed, by the mental health team to ensure that the relationship between the Landlord and Tenant remains amicable.

### Analysis

Section 47(1)(d)(i) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if 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. Section 47(3) of the Act also states that a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Section 52 of the Act states that in order to be effective, a notice to end a tenancy served by a landlord must: be in writing, be signed and dated, state the grounds for ending the tenancy, and be in the approved form.

Based on the testimony of the parties in the hearing, I find that the Tenant was personally served with the One Month Notice on September 22, 2020. As the parties agreed that a residential tenancy under the Act exists, I also find that the Act applies.

Although both parties spoke to whether an employee of the Landlord, R.M. has breached the Act with regards to their behavior towards the Tenant, whether the Tenant is a good person in general, whether the Tenant pays their rent and bills on time, and whether the Tenant has sufficient supports in place to continue the tenancy without further issue, these are not that matters before me to decide. The matter before me to decide is whether I am satisfied by the Landlord on a balance of probabilities, that the Tenant breached section 47(1)(d)(i) of the Act, on or before the date the One Month Notice was served, therefore giving the Landlord cause to end the tenancy under the Act, and whether the One Month Notice served complies with section 52 of the Act.

While I appreciate the concerns raised by the Tenant, those present with them at the hearing, and those who submitted documentary evidence in support of the Tenant for my consideration, regarding the Tenant's need for stable housing, the Tenant's likely inability to secure alternate housing and the time required to do so, and the impact an eviction will have on the Tenant's physical and mental wellbeing, these are not factors which I may by law consider in assessing the validity of the One Month Notice or the Landlord's right to end the tenancy under section 47 of the Act.

Although the Tenant and their Witnesses argued that some of the facts and evidence presented by the Landlord's agents at the hearing are false, and that the Landlord does not have cause to end the tenancy, I disagree.

The documentary evidence before me on behalf of the Landlord establishes, to my satisfaction on a balance of probabilities, that there is a long-standing pattern of concerning behavior at the residential property by the Tenant towards both other occupants and employees of the Landlord. Although I have not considered the incidents from 2015 and 2018 as justification in their own right to end the tenancy by way of the One Month Notice dated September 22, 2020, as these incidents happened quite some time ago, I have considered them as contextual information regarding the history of the Tenant's behavior at the residential property. While the Tenant and their Witnesses raised concerns regarding the authenticity and veracity of several written statements in

the documentary evidence before me, I am not satisfied based on their statements at the hearing that these documents are either unreliable or fraudulent as alleged.

In any event, I am satisfied by the other documents and testimony before me for consideration by the Landlord and the Landlord's agents, even without consideration of the two written statements questioned by the Tenant and their Witness , F.M., that the Landlord has cause to end the tenancy pursuant to section 47(1)(d)(i) of the Act, because the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property, by routinely engaging in behaviour that the Landlord's employees and other occupants of the residential property find disturbing, such as the utterance of threats and the use of inappropriate and offensive language, and that they have significantly interfered with both the Landlord and other occupants of the residential property as a result of bullying, aggressive, and inappropriate behavior and unwanted and unnecessary interference in medical emergencies.

Although the Tenant alleged in their written submissions and Application that they have been served the One Month Notice for questioning the Landlord or the Landlord's employees about their management of the property and enforcement of health related regulations in place during the pandemic, I do not find that the One Month Notice has been served as a result of either the number or type of complaints being voiced by the Tenant. Instead, I am satisfied that the One Month Notice has been served, among other things, because of the manner in which the Tenant has repeatedly chosen to voice these concerns and complaints, such as yelling, swearing, uttering threats, and making offensive, derogatory, and disparaging comments about the Landlord and the Landlord's employees.

Although the Tenant committed to change moving forward, they also acknowledged their culpability in the above noted behavior and the inappropriateness of it and I do not find the Tenant's willingness to change their behavior now that they have been served with the One Month Notice in any way changes either the existence of their past behavior or the impact of this past behavior on the Landlord, the Landlord's employees, or other occupants of the residential property, many of whom have expressed either in writing or through testimony at the hearing, that the Tenant's behavior is aggressive, threatening, and inappropriate and has disturbed them so significantly that they no longer feel safe and have lost quiet enjoyment of the residential property as a whole.

Based on the above, I am satisfied that the Tenant has breached section 47(1)(d)(i) of the Act and that the Landlord therefore had cause to serve the One Month Notice. As I

am satisfied that the One Month Notice complies with section 52 of the Act, I therefore dismiss the Tenant's Application seeking cancellation of the One Month Notice without leave to reapply, and grant the Landlord an Order of Possession for the rental unit pursuant to section 55(1) of the Act. As the Tenant's application was dismissed, I decline to grant them recovery of the \$100.00 filing fee.

The parties agreed in the hearing that rent for November 2020 has been paid in full, and the Landlord stated that they are willing to accept an Order of Possession effective two weeks after service on the Tenant, given that the effective date of the Notice, October 31, 2020, has passed and their understanding that the Tenant may need more than a few days to vacate the rental unit. The Tenant and their Assistant D.W. argued that the Tenant would require significantly more than two weeks to find alternate housing and vacate the rental unit, given their age, unique needs, the lack of available alternative housing and the pandemic.

Section 68(2)(a) of the Act states that without limiting section 62(3) [*director's authority respecting dispute resolution proceedings*], I may, in accordance with the Act, order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy. Given that the effective date of the One Month Notice has passed and having taken the submissions of both parties, and the reality of the situation, into consideration, I find that December 31, 2020, is a reasonable and appropriate end date for the tenancy and I therefore grant the Landlord an Order of Possession for 1:00 P.M. on this date.

### 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 December 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 Act.

Dated: December 2, 2020

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Residential Tenancy Branch