



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, CNC, OLC

### Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy, pursuant to section 47; and
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for an Order of Possession for Landlord's Use of Property, pursuant to sections 47 and 55.

Both parties agree that the landlord was personally served with the tenants' application for dispute resolution. I find that the landlord was served in accordance with section 89 of the *Act*.

The landlord testified that the tenants were personally served with her application for dispute resolution. Tenant S.H. testified that the tenants were not served with the landlord's application for dispute resolution. No proof of service documents were entered into evidence.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

I find that the landlord has not proved that her application for dispute resolution was served on the tenants. The landlord's application is therefore dismissed. I note that the dismissal of the landlord's claim does not impact the outcome of this decision as the landlord is entitled, under section 55 of the *Act*, to an Order of Possession if the tenant's application is dismissed or the One Month Notice is upheld and conforms to the requirements of section 52 of the *Act*.

#### Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the One Month Notice to End Tenancy for Cause (the "One Month Notice") and the continuation of this tenancy is not sufficiently related to the tenants' claim for an Order for the Landlord to comply with the *Act* to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the One Month Notice.

The tenants' other claim is unrelated in that the basis it rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the One Month Notice. I exercise my discretion to dismiss the tenants' claim for an Order for the landlord to comply with the *Act*, with leave to reapply.

#### Issues to be Decided

1. Are the tenants entitled to cancellation of the One Month Notice to End Tenancy, pursuant to section 47 of the *Act*?
2. If the tenants' application is dismissed or the landlord's Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 1, 2020 and is currently ongoing. Monthly rent in the amount of \$1,800.00 is payable on the first day of each month. A security deposit of \$900.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the tenant was served with the landlord's One Month Notice in person on September 26, 2020. The One Month Notice is dated September 25, 2020 and has an effective date of November 1, 2020.

The One Month Notice states the following reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site.
- 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;
  - put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
  - damage the landlord's property;
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
  - Jeopardize a lawful right or interest of another occupant or the landlord.
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- Tenant has not done required repairs of damage to the unit/site.
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park; and

- Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

Both parties agree that they had a previous arbitration following the landlord's application for an emergency end to tenancy. Both parties agree that they entered into a settlement agreement, which was entered into evidence. The file number for the previous arbitration is located on the cover page of this decision. The terms of the settlement agreement were:

1. The dogs currently on the residential property, including but not limited to the Tenants' daughter's pit bull, and owned by the Tenants' family members, (hereinafter referred to as the "Dogs") shall be leashed at all times while on the residential property.
2. The Dogs shall be removed from the residential property by no later than September 7, 2020.
3. As of September 7, 2020, the Tenants' guests and family members shall vacate the residential property.
4. There shall be no smoking inside the rental unit.
5. The parties agree that the Tenants may end their tenancy prior to the expiration of the fixed term tenancy on December 31, 2020, provided that they give thirty days notice of their intention to vacate the rental unit.
6. The Landlord shall only enter the rental unit in accordance with section 29 of the Act.
7. The Tenants agree that they are responsible for the yard maintenance for the yard surrounding the rental home as well as for removing the blackberries from the field with the chicken coop.
8. Unless in the case of an emergency, the parties shall restrict their communication to email.
9. The Tenants shall not make any repairs or alterations to the rental unit without the Landlord's express written consent.

The landlord testified that since the arbitration, the tenants have not complied with the settlement agreement. The landlord testified that the dogs were only sometimes tied up and that the dogs were not removed from the property until September 15, 2020 when the tenants' daughter vacated the property. The landlord testified that since the tenant's daughter vacated the property, the daughter's pit-bull has been at the property.

The landlord testified that since the last arbitration the tenant has not picked up the dog poo in the yard and did not complete yard work until the tenant was notified of the

landlord's intention to file this application.

Tenant S.H. testified that she has picked up the dog poo and taken care of the yard. Tenant S.H. testified that her daughter and her daughter's dog have visited the subject rental property since the last arbitration. The tenant testified that she is permitted to have visitors. Tenant S.H. testified that her daughter's pit bull is a farm dog, is only off leash when supervised and does not attack people.

Both parties agree that the tenancy agreement states that no large dogs are permitted on the property. Tenant S.H. testified that her daughter's pit bull is a medium sized dog. The tenants did not enter into evidence any documents pertaining to the size of the pit bull.

### Analysis

I find that the One Month Notice complies with the requirements of section 52 of the *Act*.

Section 47 of the *Act* states:

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

(a)the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;

(b)the tenant is repeatedly late paying rent;

(c)there are an unreasonable number of occupants in a rental unit;

(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,

(ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii)put the landlord's property at significant risk;

(e)the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i)has caused or is likely to cause damage to the landlord's property,

- (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;
- (h) the tenant
  - (i) has failed to comply with a material term, and
  - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [*assignment and subletting*];
- (j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;
- (k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
- (l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:
  - (i) the date the tenant receives the order;
  - (ii) the date specified in the order for the tenant to comply with the order.
- (2) A notice under this section must end the tenancy effective on a date that is
  - (a) not earlier than one month after the date the notice is received, and
  - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(4)A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5)If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b)must vacate the rental unit by that date.

Based on the testimony of both parties, I find that the landlord has breached the settlement agreement by allowing her daughter's pit bull on the subject rental property after the settlement agreement was reached. This history of the parties and the previous dispute between the parties made it abundantly clear that the landlord did not approve of the pit bull being on the subject rental property and the landlord agreed to have it removed.

I find that the tenants have not proved that the pit-bull is a medium sized dog and not a large sized dog. I find that the presence of the pit bull on the subject rental property after the settlement agreement was reached by the parties, significantly interfered with or unreasonably disturbed the landlord of the residential property, contrary to section 47(1)(d)(i) of the *Act*. I therefore uphold the landlord's notice and dismiss the tenant's application for dispute resolution.

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

(a)the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b)the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that since the One Month Notice complies with section 52 of the *Act* and the tenant's application to cancel the One Month Notice was dismissed and the landlord's notice was upheld, the landlord is entitled to an Order of Possession effective December 31, 2020.

As I have determined that the landlord is entitled to an Order of Possession pursuant to section 47(1)(d)(i) of the *Act*, I decline to consider if the landlord is entitled to an Order of possession under any other subsection of section 47(1) of the *Act*.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on December 31, 2020**, which should be served on the tenants. Should the tenants 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: December 14, 2020

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Residential Tenancy Branch