



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC  
                             OPC, FFL

### 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”).

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.

This hearing also dealt with a Cross-Application for Dispute Resolution (the Cross-Application) that was filed by the Landlord under the Act (the Act), seeking:

- An Order of Possession for the rental unit based on the One Month Notice; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord and the Landlord’s son, who also acted as their agent (the Agent), both of whom provided affirmed testimony. No one appeared at the hearing on behalf of the Tenant. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Landlord and Agent testified that the Landlord's documentary evidence and the Notice of Dispute Resolution Proceeding Package for the Cross-Application, including a copy of the Cross-Application and the Notice of Hearing, were personally served on the Tenant on October 21, 2020, two days after they received the Notice of Dispute Resolution Proceeding Package from the Residential Tenancy Branch (the Branch). The Landlord and Agent stated that they were served on the Tenant in the presence of a witness and provided a video of this service and a witnessed and signed proof of service document in support of this testimony. As a result of the above, I find that the Tenant was served with the above noted documents in accordance with the Act and the Rules of Procedure on September 30, 2020. Although no one appeared on behalf of the Tenant at the hearing to provide any evidence or testimony for my consideration, the Landlord and Agent acknowledged receipt of the Tenant's Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing.

Based on the above and pursuant to rule 7.3 of the Rules of Procedure, the hearing proceeded as scheduled despite the absence of the Tenant or an agent acting on their behalf.

At the request of the Landlord and Agent, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Cross-Application.

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 and determinative facts, evidence and issues in this decision.

### Preliminary Matters

Although two Applicants are listed as tenants in the Tenant's Application, only the Applicant H.L. is listed as a tenant in the tenancy agreement. During the hearing the Landlord and Agent stated that the other Applicant, E.L. is in fact an occupant of the rental unit, not a tenant, as they are H.L.'s minor child.

Based on the above, I am satisfied that E.L. is an occupant of the rental unit rather than a tenant and that they therefore have no rights or obligations under the tenancy agreement. I have therefore removed them as a named party from the Application. Throughout this decision H.L. has therefore been referred to as the Tenant.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If not, is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to recovery of the \$100.00 filing fee?

Background and Evidence

The written tenancy agreement in the documentary evidence before me from the Landlord, signed on May 30, 2016, states that the month to month tenancy commenced on May 18, 2016, that rent in the amount of \$750.00 is due on the 31<sup>st</sup> (the last day of each month), plus 40% of utilities, and that a \$375.00 security deposit was paid. The tenancy agreement also prohibits pets and smoking and has a one page addendum attached.

During the hearing the Agent and Landlord stated that these are the correct terms of the tenancy agreement and that the Landlord still holds the Tenant's \$375.00 security deposit in trust.

The Landlord and Agent stated that the Tenant has repeatedly breached material terms of the tenancy agreement by smoking in the rental unit and on the property and by having pets. The Landlord and Agent also stated that the Tenant or persons permitted on the residential property by the Tenant have unreasonably disturbed another occupant of the residential property and seriously jeopardized the other occupant's health and safety. In support of this testimony they provided photo and video evidence, a written statement from another occupant of the residential property and copies of warning letters previously served on the Tenant.

The Landlord and Agent stated that as the Tenant's behavior has continued despite the service of four previous warning letters on August 25, 2019, March 8, 2020, July 15, 2020, and September 16, 2020, regarding the above noted issues, copies of which were submitted for my consideration, and as a result, the Landlord and Agent stated that the One Month Notice was subsequently served on the Tenant in person on September 30, 2020.

The One Month Notice in the documentary evidence before me is on the most recent version of the #RTB-33 form, is signed and dated September 30, 2020, gives the address for the rental unit and has an effective date of October 31, 2020. The grounds selected for ending the tenancy are as follows:

- 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.
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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.
- The tenant has failed to comply with a material term of the tenancy agreement has not corrected the situation within a reasonable time after the landlord gave written notice to do so.

In the details of cause section of the One Month Notice it states the following:

Details of the Event(s): Describe what, where and who caused the issue and include dates/times, names etc. Information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

The signed Tenancy Agreement on May 30, 2016 clearly states no smoking and no pets. Ms. Latimer has broken this agreement on several occasions as well, despite warnings and notices to stop. A warning notice letter was given by the landlord and received by Ms. Latimer on August 25, 2019 regarding smoking. An additional letter was given on March 8, 2020 due to disturbing the neighborhood and other tenants of the property. Furthermore, a warning letter on July 15, 2020 was given due to large dogs on the property and cats inside the house, as well as continued smoking in a non-smoking house as per agreement. On September 16, 2020 another follow up breach up letter was handed in person regarding pets inside and outside the house. Ms. Latimer continued to disturb the peace and quiet of the upstairs tenants and neighborhood. As a result, due to the breach of the above mentioned issues, a One month notice to end tenancy for cause was made.

The Landlord and Agent submitted photographs, a video, and a witness statement in support of their testimony that the One Month Notice was personally served on the Tenant on September 30, 2020, and I note that this date is also referenced by the Tenant in their own Application.

Despite having filed their own Application disputing the One Month Notice and my finding earlier in this decision that the Tenant was personally served with the Landlord's Cross-Application, the Notice of Hearing, and the Landlord's documentary evidence on

October 21, 2020, no one appeared at the hearing on behalf of the Tenant to provide any documentary evidence or testimony for my consideration.

The Landlord and Agent stated that although the Tenant has not paid rent for the current month of December 2020, they continue to reside in the rental unit. As a result, they sought an Order of Possession for the rental unit as soon as possible. They also sought authorization to withhold \$100.00 from the Tenant's security deposit in recovery of the filing fee.

### Analysis

Based on the uncontested documentary evidence and affirmed testimony before me from the Agent and the Landlord, I am satisfied that terms of the tenancy are as set out in the written tenancy agreement and addendum before me from the Landlord, and that the One Month Notice in the documentary evidence before me was personally served on the Tenant on September 30, 2020.

Section 47 of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- 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.
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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.
- The tenant has failed to comply with a material term of the tenancy agreement has not corrected the situation within a reasonable time after the landlord gave written notice to do so.

Based on the uncontested documentary evidence and affirmed testimony before me from the Agent and the Landlord, including a written statement from another occupant of the residential property, I am satisfied that the Tenant or a person permitted on the residential property by the Tenant has significantly interfered with or unreasonably disturbed another occupant of the residential property. Having made this finding, I do not find it necessary to address the other grounds for ending the tenancy listed by the

Landlord in the One Month Notice. As a result of the above, I find that the Landlord had grounds to end the tenancy under section 47 of the Act. As I find that the One Month Notice complies with section 52 of the Act, I therefore uphold the One Month Notice and find that the Landlord is entitled to an Order of Possession for the rental unit. As the effective date of the One Month Notice has passed and the Landlord and Agent testified that rent for the current month of December has not been paid, I therefore grant the Landlord an Order of Possession effective two days after service on the Tenant pursuant to section 55(1) and 68(2) of the Act.

Based on the above and as neither the Tenant nor an agent acting on their behalf appeared at the hearing of their own Application to provide evidence or testimony for my consideration, I therefore dismiss the Tenant's Application seeking cancellation of the One Month Notice without leave to reapply.

As the Landlord was successful in their Application, I grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 72(2)(b) and at the request of the Agent and Landlord in the hearing, I authorize the Landlord to retain \$100.00 from the Tenant's \$375.00 security deposit in recovery of the filing fee. The remaining balance of the security deposit must be dealt with by the Landlord in accordance with the Act.

### Conclusion

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two (2) days 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. The Tenant is cautioned that costs of such enforcement are recoverable from them by the Landlord.

Pursuant to section 72(1) and 72(2)(b) of the Act, I authorize the Landlord to retain \$100.00 from the Tenant's \$375.00 security deposit in recovery of the filing fee.

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 22, 2020

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Residential Tenancy Branch