



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC-MT, FFT

On November 18, 2020 the tenant applied for dispute resolution for an order cancelling the One-Month Notice to End Tenancy For Cause (the “One-Month Notice”). On this application, they requested more time to dispute the 10-Day Notice that the landlord issued on October 28, 2020. They also applied for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “*Act*”) on February 9, 2021. Both parties attended the conference call hearing. Both parties confirmed in the hearing that they received the documentary evidence prepared by the other in advance of the hearing.

### Issue(s) to be Decided

Is the tenant entitled to more time in which to file an Application for Dispute Resolution, pursuant to section 66 of the *Act*?

Is the tenant entitled to an order that the landlord cancel the 10-Day Notice pursuant to section 46 of the *Act*?

Is the landlord entitled to issue an Order of Possession pursuant to sections 55 of the *Act*?

Is the tenant entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

## Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord provided a copy of the tenancy agreement that shows both parties signed on March 9, 2015. Over time the rent amount increased to \$828 per month, and when a second tenant began living in the unit, this increased again to \$1,028. An addendum was signed by both current tenants on August 24, 2020. This provides that

The tenant, any member of their household, or any guest shall not engage in any criminal activity on the property and a violation shall be a material breach of the tenancy agreement and result in termination of the tenancy. Proof of violation will not require a criminal conviction.

The landlord provided a copy of the One-Month Notice, issued on October 28, 2020, specifying the end-of-tenancy date at November 30, 2020. In the hearing the tenant verified that the landlord served this document to them in person on October 28, 2020. The second page of the document lists the landlord's reasons for issuing:

- tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
  - jeopardize a lawful right or interest of another occupant or the landlord.

The landlord attached a one-page document to the One-Month Notice. This describes an incident on October 21, 2020 involving the newer tenant, and an individual neighbour who lived within the immediate area. The actions of the newer tenant were described by the landlord in this letter as that which “presents a risk to the owner and occupants of the adjoining property, to the management and occupants of the [rental property].”

In the hearing, the landlord described the incident, and how it came to their attention on that same day. They also described their interaction with the newer tenant on the day after the incident. In the landlord's recollection, the tenant admitted to the incident in question, and queried about police involvement.

The landlord also provided a one-page statement from the other party involved in the incident with the tenant.

The tenant applied for a cancellation of the One-Month Notice on November 18, 2020. This is past the 10-day timeframe specified on page 1 of the document. On their Application, the tenant stated: “death in the family”. In the hearing, the tenant provided that a family relation passed away on October 10, 2020. After the landlord served the One-Month Notice on October 28, another family member broke their arm, and this required the tenant helping that family member both before their workday and after that workday. In the hearing, the tenant also described the nature of their job, which involves “field work.”

In the hearing, the tenant spoke to the precise term as stated within the Addendum, with this reference being to no criminal activity on the property. Their submission is that this incident in question did not take place exactly on the property, and this was the only single incident in question. The tenant also identified that the statement from the “victim” here was not dated or signed, and this raises their concern of the value of this account as evidence.

The tenant submitted a document a few days prior to this hearing. They request special consideration in this decision for an appropriate move-out time for them, should this One-Month Notice be upheld. Their request date here is for move-out on March 31, 2021.

### Analysis

Section 47(1) of the *Act* states that a landlord may end a tenancy if any of the certain categories apply. Two of the conditions listed are those indicated by the landlord on the One-Month Notice: where the tenant seriously jeopardized health and safety; and illegal activity that affects others and jeopardized their legal rights.

Section 47(4) of the *Act* states that within 10 days of receiving it, a tenant may dispute the One-Month Notice by making an application for dispute resolution.

In regard to the tenants’ request to file the Application after the dispute period, the *Act* section 66(1) provides:

The director may extend a time limit established by this Act only in exceptional circumstances.

In these circumstances, I find that exceptional circumstances for the tenants are not proven in their oral testimony. Therefore, I find the tenant is not entitled to more time to dispute the One-Month Notice. The tenant explained their role in assisting family members both before and after the landlord's service of this document.

Their assistance with family members does not constitute exceptional circumstances. There is no accounting for their inability to get to a locale that accepts the application within this time period after receiving the document from the landlord. Further, with this being a matter of urgency, the tenant did not present that they attempted to make other arrangements to attend to applying for this hearing. I find there were not exceptional circumstances barring their mobility or seeking other resources online to assist in applying for this hearing.

The landlord issued the One-Month Notice on October 28, 2020. The tenants failed to apply for dispute resolution within the specified time limit of 10 days after they received it. I find the tenant is not entitled to more time.

For these reasons, I dismiss the tenants' Application to cancel the One-Month Notice. The tenancy is ending. This is an application of section 47(5) of the *Act* which provides that where the tenant does not make an application within 10 days, they are conclusively presumed to have accepted the tenancy will end.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession.

I find the One-Month Notice complies with the requirements of form and content. It is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the ground for ending the tenancy, and is in the approved form. For this reason, the landlord is entitled to an Order of Possession.

Because the tenant is not successful in their application to cancel the One-Month Notice, their request for reimbursement of the Application filing fee is dismissed.

Conclusion

I grant an Order of Possession to the landlord effective **February 28, 2021 at 1:00 p.m.** 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 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 *Act*.

Dated: February 9, 2021

---

Residential Tenancy Branch