



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **LRE, CNC, FFT**

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order to suspend a landlord's right to enter the rental unit pursuant to section 70;
- An order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both the tenant and the landlord attended the hearing. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Application for Dispute Resolution and the tenant acknowledged service of the landlord's evidence. Neither parties raised any concerns with timely service of documents. Both parties gave affirmed testimony.

### Preliminary Issue – Unrelated Issues

Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure ("Rules") allow an arbitrator to consider whether issues are related and if they would be heard at the same time. I determined the issue of whether to cancel the landlord's one month notice to end tenancy for cause was unrelated to the tenants' other issues and dismissed them with leave to reapply at the commencement of the hearing.

### Issue(s) to be Decided

Should the One Month Notice To End Tenancy for Cause be cancelled or upheld?  
Can the tenant recover the filing fee?

### Background and Evidence

The landlord gave the following testimony. He purchased the rental unit with the tenancy already existing with this tenant. A copy of the tenancy agreement with the previous landlord was filed as evidence.

On November 9, 2020, the landlord sent the tenant a copy of the One Month Notice to End Tenancy for Cause by registered mail to the tenant's residential address. The tracking number for the mailing is recorded on the cover page of this decision.

The tenant acknowledged she received the notice to end tenancy on November 12, 2020. She specifically recalled receiving it on this date because November 12<sup>th</sup> is her birthday.

A copy of the notice to end tenancy was provided as evidence. The notice is dated November 9<sup>th</sup>, is signed by the landlord and provides an effective date of December 31, 2020. The reasons for ending the tenancy are as follows:

1. The 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.
2. the 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;
3. the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

The top portion of the One Month Notice To End Tenancy for Cause states:

#### **How to Dispute this Notice**

You have the right to dispute this notice within 10 days of receiving it, by filing an application to dispute resolution with the residential tenancy branch online, in person at any service BC office or by going to the residential tenancy branch office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this notice.

The tenant testified that she received the notice to end tenancy on November 12<sup>th</sup>, her birthday. When I asked the tenant why she filed her application eleven days later, on November 23<sup>rd</sup>, the tenant responded by saying she had to do due diligence by

reviewing the *Residential Tenancy Act* to make sure she had her “*points in line*”. She needed the additional time to get in contact with an asbestos abatement specialist to corroborate her argument that the landlord’s reasons for ending the tenancy are invalid. The tenant argues the “*repairs*” the landlord wants to make to the rental unit are cosmetic. I note here that the landlord served a notice to end tenancy for cause, not for repairs or renovations.

### Analysis

Based on her own undisputed testimony, I am satisfied that the tenant received the One Month Notice to End Tenancy for Cause on her birthday, November 12, 2020 in accordance with sections 88 and 90 of the *Act*.

Sections (4) and (5) of the *Act* state:

- (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.

As stated previously, the tenant received the notice to end tenancy on November 12<sup>th</sup>. She filed her Application for Dispute Resolution to dispute the notice on November 23<sup>rd</sup>, eleven days after receiving the notice. While section 66 of the *Act* allows the director to extend established time limits, including time to make an application to dispute a notice to end tenancy, I may only do so under exceptional circumstances. I do not find the reasons the tenant delayed in filing her Application for Dispute Resolution were exceptional in any way. She had the opportunity to file her application within the 10-day time frame before gathering evidence to corroborate her argument.

The tenant has not made application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the tenant’s failure to take this action within ten days led to the end of this tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by December 31, 2020.

As that has not occurred, I find that the landlord is entitled to an Order of Possession effective 2 days after service.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in 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: February 15, 2021

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Residential Tenancy Branch