



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FFL  
                             CNC, AAT, OLC, PSF, RP, FFT

### Introduction

This hearing convened as a result of cross applications. In the Landlord's Application, filed on January 16, 2021, the Landlord sought an Order of Possession based on a 1 Month Notice to End Tenancy for Cause issued on January 7, 2021 (Notice), as well as recovery of the filing fee. In the Tenant's Application filed on January 17, 2021, the Tenant sought the following relief:

- an Order canceling the Notice;
- an order for access to the rental unit;
- an Order that the Landlord:
  - comply with the *Residential Tenancy Act (Act)*, the *Residential Tenancy Regulations (Regulations)* and or the tenancy agreement;
  - provide services or facilities;
  - make repairs to the rental unit.
- and recovery of the filing fee

The hearing was conducted by teleconference at 9:30 a.m. on April 1, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Tenant's father, H.S., also called into the hearing, however his testimony was not required.

### Preliminary Matter—Evidence

The parties agreed that all evidence that each party provided had been exchanged.

At the outset of the hearing the Landlord testified that she submitted a forged document in evidence before me. Namely, she submitted a document, purporting to be from the municipality, dated January 7, 2021, in which the rental unit was located, which ordered the Landlord to ensure the rental unit was vacated. The Landlord confirmed she had falsified this document. She also stated that she had been “slapped on the wrist” by the municipality, as well as the police, and that she was regretful for submitting this document.

No other issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties’ respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

*Preliminary Matter—Issues to be Decided*

Hearings before the Residential Tenancy Branch are governed by the *Residential Tenancy Branch Rules of Procedure*. At all times an Arbitrator is guided by *Rule 1.1* which provides that Arbitrators must ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

*Residential Tenancy Branch Rule of Procedure 2.3* provides 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.

Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant’s request for emergency repairs or the validity of a notice to end tenancy are given priority over most claims.

It is my determination that the priority claim before me is the validity of the Notice. I also find that this claim is not sufficiently related to the balance of the Tenant’s claims; accordingly, I exercise my discretion and dismiss the Tenant’s claims with leave to reapply.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Should the Notice be cancelled?
3. Should either party recover the filing fee?

### Background and Evidence

*Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy.

The Landlord testified as follows. The tenancy began July 1, 2020. The rental unit is a tiny home on her property. The Landlord stated that she created four RV “hookup” sites on her property in June and July of 2020. She confirmed that the Tenant rents a tiny home which is in turn owned by her father, H.S. The Tenant pays \$690.00 per month in rent and paid a \$325.00 security deposit.

The Landlord stated that the entire property is two acres. There is a home with an upstairs (where the Landlord and her daughter live) as well as two ground level suites which are currently rented out long term. The Landlord also rents out two tiny homes on the property, one of which is the subject rental unit.

On the Application, the Landlord indicated the following reasons for wishing to end this tenancy:

*“[Tenant] is renting a space that is not considered legal, thus negating his legal lease. This District states that residence in tiny homes, cars or trailers is legal for 2 weeks only. I can be fined \$1000/day for him residing here. He has also erected an illegal structure on-site. We have requested he take it down. He has not. He has also invited overnights guests here during COVID, endangering the lives of others on this property.”*

The Notice was served on the Tenant by posting to the rental unit door on January 7, 2021. The reasons cited on the Notice are as follows (for ease of reference I have numbered the paragraphs):

1. the Tenant has allowed an unreasonable number of occupants in a rental unit (the Landlord wrote “during Covid” on the Notice);

2. 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,
  - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - put the landlord's property at significant risk;
3. the Tenant has engaged in illegal activity that has caused or is likely to
  - damage to the landlord's property,
  - 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
  - jeopardize or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
4. the rental unit must be vacated to comply with a government order (Landlord indicated this was the "main concern" on the Notice);
5. Tenant's rental unit/site is part of an employment arrangement that has ended and the unit/site is needed for a new employee (the Landlord wrote: "potentially by March 7, 2021 covid related" on the Notice);

In terms of the details of cause the Landlord provided the following information on the Notice:

- [Tenant] invited his daughter from [city name withheld] on the property during a restricted travel time, the night before he had initially been evicted. This put myself and other tenants at-risk.
- [Tenant] did not respond to the first eviction notice.
- [Tenant] has erected an illegal structure on the land, which [municipality name withheld] have requested be taken down. The owner has made the same request.
- This residence's "lease" is considered invalid due to [municipality name withheld] bylaws.
- [Tenant] is running an unlicensed business on the property after being asked not to.
- [municipality name withheld] bylaw do not allow/condone residences in tiny homes on RA-2-zoned property.

Dealing with the first reason cited on the Notice, the Landlord confirmed that the Tenant does not have another person living with him. She stated that he has his daughter and girlfriend come to visit, which she believes make them occupants, and which she also believes is in violation of the COVID-19 Provincial Health Orders (PHO).

In terms of the second reason, the Landlord testified that she has received complaints from the neighbours as well as the municipality with respect to the tiny home and the unauthorized secondary structure. The Landlord stated that the main reason for issuing the Notice was that this is a low-density area and she is trying to correct the mistake

she made of creating a high-density living situation. The Landlords stated that due to earthquake and tsunami risk, the high density of her property puts everyone at risk.

The Landlord further testified that she has a temporary use permit for one of the tiny homes which expires in December 2021. She claimed that she was not able to get a temporary use permit for the other tiny home, which is the subject of these proceedings.

The Landlords confirmed that it is her intention to remove the tiny home once the tenancy ends. She stated that she would not rent the spaces out to RVs. She further stated that she intends to sell the entire property in the next few months.

In terms of the third reason, and the Landlord's claim that the Tenant has engaged in illegal activity, the Landlord testified that the Tenant built an illegal secondary structure next to the tiny home for his daughter when she comes to visit. The Landlord stated that she did not consent to the building and it was built by the Tenant without required permits. She characterized this as "vandalism". She also stated that she asked the Tenant to remove the building. In support she provided photos of the building.

The Landlord also testified that the Tenant also locked the power-grid two weeks prior to the hearing which affected her access to the power as well as all other tenants on the property.

As noted in the Introduction section of this my Decision, the Landlord confirmed there was no order from the municipality to have the property vacated as the order she submitted in evidence was in fact a forged document.

In terms of the fifth and final reason, the Landlord stated there was no contract made, but she hired the Tenant as a caretaker for the property. She stated that she is not hiring a new caretaker.

In response to the Landlord's claims the Tenant testified as follows. He confirmed that he built a secondary structure next to the tiny home. He stated that due to its size building permits were not required. He also testified that he had the Landlord's verbal consent to build such a structure. He stated that he informed the Landlord that he intended to have his daughter stay there when she visits during school breaks. He stated that the Landlord was fine with this.

The Tenant further stated that he started building in July and August 2020 and the Landlord was aware of the construction as he drove by her home regularly with building materials. He stated that he halted construction due to weather.

The Tenant confirmed that the Landlord asked the Tenant to remove it but that she also asked if she could purchase the structure. The Tenant stated that he has not removed the secondary structure. He stated that he uses it primarily for dry storage, such as food and clothing, and that when his daughter comes to visit, she sometimes sleeps there. The Tenant testified that on December 6, 2020 the Landlord asked to purchase the cabin. The Tenant stated that there was no offer, but the Tenant did inform them that he would accept \$5,000.00 to \$10,000.00 to cover materials.

In response the Landlord initially stated that she agreed to the Tenant building the secondary building when he was working for her. She then resiled from this position and stated that if she had to say whether she consented or did not consent to the building, that she did not.

### Analysis

Ending a tenancy is a significant request and must be done in accordance with the *Act*. In this case the Landlord sought to end the tenancy pursuant to sections 47 and 48 of the *Act*.

A Landlord may end a tenancy for cause pursuant to section 47 which reads as follows:

#### **Landlord's notice: cause**

**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.

As noted, the Landlord bears the burden of proving her reasons for issuing the Notice on a balance of probabilities.

The first reason cited on the Notice is that the Tenant has allowed an unreasonable number occupants in the rental unit. This reason is provided for in section 47(1)(c) of the *Act*. The use of the word *occupant* in section 47(1)(c) and the Notice means a person who *occupies* the rental unit as their residence. The evidence before me confirms that the Tenant does not have a roommate, or additional occupant living with him; rather he has his daughter visit on school breaks and his girlfriend who visits and on occasion spends the night.

The Landlord indicated that her concerns was during the COVID-19 pandemic. In written submissions she alleged the Tenant put others at risk by having guests to the rental property. The current PHO mandates British Columbians to reduce their contact with others. It allows parents to continue to share parenting time with their children. As well, exceptions are present for single persons to have contact with a small number of other people. On balance I find the Landlord has failed to prove the Tenant has contravened the PHO.

In any event, I note that section 9 of the Schedule to the *Regulation* prohibits a Landlord from including restrictions on guests in a tenancy agreement and reads as follows:

**Occupants and guests**

**9** (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.

(2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

(2.1) Despite subsection (2) of this section but subject to section 27 of the Act *[terminating or restricting services or facilities]*, the landlord may impose reasonable restrictions on guests' use of common areas of the residential property.

(3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*.

I accept the Tenant's evidence that he does not have any other occupants living in the rental unit, although his daughter and girlfriend visit. I find these individuals to be guests not occupants and I therefore find the Landlord has failed to establish that the Tenant has allowed an unreasonable number of occupants to reside in the rental unit as contemplated by section 47(1)(c).

The Landlord also submitted that the tenancy should end pursuant to section 47(1)(d). In this respect she alleged that the Tenant living in the tiny home and building a secondary building on the property has put the property at risk due to the municipal zoning bylaws. As the Landlord conceded that she fabricated documents from the municipality, I decline to consider any evidence submitted by the Landlord purporting to be from the municipality. I also give no weight to the testimony she provided with respect to discussions she had with the municipality regarding her property as I find she lacks credibility in this respect. On balance, I find the Landlord has failed to prove that the Tenant has put the property at significant risk, as contemplated by section 47(1)(d).

The Landlord also sought to end the tenancy pursuant to section 47(1)(e). In this respect, the Landlord alleged the Tenant engaged in illegal activity, namely, that he *vandalized* the property by building a secondary structure.

*Residential Tenancy Policy Guideline 32—Illegal Activities* provides that the party alleging the illegal activity has the burden of proving that the activity was illegal. In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlords' property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

*Policy Guideline 32* further provides that, “[t]he illegal activity must have some effect on the tenancy... A tenant may have committed a serious crime such as robbery or physical assault; however, in order for this to be considered an illegal activity which justifies issuance of a Notice to End Tenancy, this crime must have occurred in the rental unit or on the residential property”.

The Landlord alleged the construction of the secondary structure was done without permits. When provided an opportunity to reply to the Tenant’s submissions, and his allegation that she consented to the building of the secondary building, she initially stated that she did, but only when the Tenant was working for her. She then stated that she did not consent.

The Tenant testified that permits were not required due to the size of the secondary structure. I find the Landlord has failed to prove the building of the secondary structure contravenes Building Codes and is “illegal”. Even in the event I had made such a finding, I am not persuaded by the Landlord’s testimony that she did not consent to this building.

The Tenant testified that the Landlord consented to him building this structure. The photos submitted in evidence confirm that this secondary building was built to mirror the shape of the tiny home. It appears to be well built. The Tenant testified that the Landlord agreed to him building this secondary structure and also offered to purchase the building from the Tenant.

On balance, I find the Landlord consented to the building of this secondary structure. I accept the Tenant’s testimony that he drove by the Landlord’s residence with building materials and find it likely she would have been aware of the construction. I find it more likely the Landlord resiled from this position when she sought to end this tenancy. I find the Landlord’s characterization of this building as “vandalism” to be a gross and unfortunate exaggeration.

The Landlord testified that the Tenant installed a lock on the power grid two weeks prior to the hearing. As this allegedly occurred after the issuance of the Notice, I do not consider this relevant to the issues before me. I also did not provide the Tenant with an opportunity to reply to this allegation. I therefore make no findings in this respect.

In all the circumstances I find the Landlord has failed to prove the Tenant has engaged in illegal activity as contemplated by section 47(1)(e).

The Landlord also sought to end the tenancy pursuant to section 47(1)(k). The evidence confirms that the rental unit does not need to be vacated to comply with a government order as no such order exists. The only document filed in evidence by the Landlord in this regard was a document she falsified. I therefore find the Landlord has failed to prove this reason for ending the tenancy.

The final reason cited on the Notice relates to section 48 which reads as follows:

**48** (1)A landlord may end the tenancy of a person employed as a caretaker, manager or superintendent of the residential property of which the rental unit is a part by giving notice to end the tenancy if

(a)the rental unit was rented or provided to the tenant for the term of his or her employment,

(b)the tenant's employment as a caretaker, manager or superintendent is ended, and

(c)the landlord intends in good faith to rent or provide the rental unit to a new caretaker, manager or superintendent.

(2)An employer may end the tenancy of an employee in respect of a rental unit rented or provided by the employer to the employee to occupy during the term of employment by giving notice to end the tenancy if the employment is ended.

(3)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 tenant receives the notice,

(b)not earlier than the last day the tenant is employed by the landlord, and

(c)the day before the day in the month, or in the other period on which the tenancy is based, that rent, if any, is payable under the tenancy agreement.

(4)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(5)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.

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

The Landlord confirmed she does not intend to use the tiny home for a new employee. She testified that she intended to remove the tiny home and sell the entire rental property. I therefore find the Landlord has also failed to prove the tenancy should end pursuant to section 48.

**For these reasons I find the Landlord has failed to prove the reasons for ending this tenancy. The tenancy shall continue until ended in accordance with the Act.**

As the Tenant has been successful in his application, I award him recovery of the filing fee pursuant to section 72 of the *Act*. He may reduce his next month's rent by \$100.00 as recovery of these funds.

### Conclusion

The Landlord's request for an Order of Possession and recovery of the filing fee based on the Notice is dismissed without leave to reapply.

The Tenant's request for an Order canceling the Notice is granted. The Tenant is also entitled to recover the filing fee and may reduce his next month's rent by \$100.00.

The balance of the Tenant's claim is dismissed with leave to reapply.

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: April 01, 2021

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Residential Tenancy Branch