



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on January 6, 2021, wherein the Tenant sought to cancel a "Notice to End a Residential Tenancy" issued on December 31, 2020 (the "Notice").

The hearing was conducted by teleconference at 1:30 p.m. on April 12, 2021. Both parties called into the hearing. The Landlord was also assisted by her Assistant Manager, E.M.

The parties agreed that all evidence that each party provided had been exchanged. No 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.

### Issue to be Decided

Should the Notice be cancelled?

### Background and Evidence

*Residential Tenancy Branch Rules of Procedure—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.

A copy of the Notice was provided in evidence before me. The Notice was completed on an outdated form which referenced previous section numbers of the *Residential Tenancy Act*. On the second page of the Notice the Landlord was directed to check off the applicable reason for ending the tenancy; the Landlord did not check off any of the boxes. On the first page of the Notice in section D the Landlord was directed to provide particulars in support of her reasons for ending the tenancy, in response she wrote "HARRASSMENT"; no further particulars were provided. For clarity, I reproduce that section as follows:

**D. Reason for the Notice:** (See the Reasons for the Notice on page 2 of this form and check the appropriate box(es))

- Give the particulars in support of your reason(s) for ending the residential tenancy, given on page 2. Attach extra pages, if necessary.

HARRASSMENT

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For reasons which will be dealt with in the Analysis section, I did not require testimony from either party.

### Analysis

Ending a tenancy is a significant request and may only be done in accordance with the *Residential Tenancy Act*.

In the case before me the Landlord served on the Tenant an outdated Residential Tenancy Branch form. This prior version was applicable to notices to end tenancy for unpaid rent, cause and for landlord's use and a landlord was required to check off the applicable box. Currently, a different form is used for these different reasons. The Landlord failed to check off any of the boxes on page 2 to indicate why she sought to end the tenancy, save and except for the word "harassment" on the first page, presumably indicating she sought to end the tenancy for cause.

A landlord who seeks to end a tenancy for cause pursuant to section 47 of the *Act* bears the burden of proving the reasons for ending the tenancy. Section 47 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 above, Section 47(3) provides that a 1 Month Notice must comply with section 52 of the *Act*. Section 52 of the *Act* provides as follows:

**Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and

(e) when given by a landlord, be in ***the approved form***.

***[Emphasis added in bold italics]***

The “approved form” as referenced in section 52(e) is #RTB-33 and which can be found online at:

<https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb33.pdf>

One of the Principles of Natural Justice is that a party to a dispute has the right to know the claim against them, the opportunity to review and respond to any evidence which is to be relied upon by the claiming party, and to be present at any hearings dealing with the issues so that they may meaningfully respond to the allegations made against them.

A landlord seeking to end a tenancy is required to inform the tenant as to why they wish to end their tenancy, and should the landlord wish to do so for *cause*, the landlord must give the tenant details of the cause on the notice to end tenancy so that the tenant knows the reasons the landlord wishes to end their tenancy and is able to respond to the specific allegations.

In this case, the Landlord failed to indicate her reasons for ending the tenancy, and failed to provide any details as to the alleged “harassment”. Consequently, I find the Notice is ineffective and should be cancelled.

**I therefore grant the Tenant’s request to cancel the Notice. The tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.**

### Conclusion

The Notice is cancelled.

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 13, 2021

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Residential Tenancy Branch