



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNRL, FFL, CNC, OLC

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the Act). The landlord applied for:

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence posted to the rental unit door on February 11, 2021. The tenant confirmed that no documentary evidence was submitted in response to the landlord's application. Both parties also confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. The landlord confirmed that an identify duplicate documentary evidence package was submitted in response to the tenant's application as that provided in the landlord's evidence submissions. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

At the outset, the tenant's application was clarified. The tenant stated that his request for an order for the landlord to comply was in relation to a breach of the tenancy agreement in which the tenant has suffered a loss of quiet enjoyment. The tenant was unable to provide any further details on this request. As such, this portion of the tenant's application was dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

At the end of the hearing the landlord stated that she wished to withdraw the monetary claim portion of the claim stating that it could be dealt with in a separate application that has already been scheduled in a different file. As such, no further action is required at this time.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to recovery of the filing fee?

Is the tenant entitled to an order cancelling the 1 month notice?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on December 1, 2020 on a fixed term ending on May 1, 2020 as per the submitted copy of the signed tenancy agreement dated November 24, 2020. The monthly rent is \$400.00 payable on the 1<sup>st</sup> day of each month. No security deposit was paid.

Both parties confirmed that on January 19, 2021, the landlord served the tenant with the 1 Month Notice dated January 19, 2021 in person. The 1 Month Notice sets out an effective end of tenancy date of February 28, 2021 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - put the landlord's property at significant risk; or

- the tenant has engaged in illegal activity that has, or is likely to:
  - damage the landlord's property;
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The details of cause states:

*D.S. not paid any rent (\$400/month, has missed December, January). Routinely uses illegal substances in the dwelling despite being asked not to. Routinely invites dealers to provide him with illegal substances at the residence despite being asked not to (most recently seen around 4:30 on January 17<sup>th</sup> January 18, 2021 7:10pm after previous notice). Routinely smokes cigarettes indoors despite being asked not to. Repeatedly slams front door loudly enough that I can clearly hear it two floors away. I am not home at all times, as I work during the day, but since last notice these are the times that I recorded him doing so (Jan 13<sup>th</sup> 9:50pm, 9:55pm, Jan 15<sup>th</sup> 4:35pm, 8pm, 10:10pm, Jan 17<sup>th</sup>, 12:03pm) when challenged on any potential issue D. immediately responds with aggression. This includes but is not limited to yelling, invading personal space (ie placing face within six inches of mine (ex January 12<sup>th</sup>)). Throwing objects (such as tv remote at the wall, breaking the remote), hitting things (ex breaking light plates), etc (for example, on the 4<sup>th</sup>, 6<sup>th</sup>, 9<sup>th</sup>, and the 12<sup>th</sup> of January). After last notification of these issues the tenant punched a hole in a wall on January 15<sup>th</sup> at around 8pm. Immediately after that he banged on the wall, then afterwards he came outside and stood in front of our window and pointed a camera phone into it. I believe that, while unacceptable on its own, this behaviour also constitutes a form of physical intimidation. At some point in the past he changed the locks on the unit without informing me, so now I do not have keys or access to the unit. He is currently storing many of his belongings in spaces that the tenancy does not cover, and that he has not been given permission to store his belongings in. He has shown no signs of a plan to remove them. All listed dates are from 2021, all interactions occurred between the tenant D.s., and myself, the landlord, J.X.*

[reproduced as written]

The landlord stated that the tenant is using illegal drugs and during one occasion “punch” a hole into a wall.

The tenant disputed this claim arguing that he has not “punched” a hole in the wall. The tenant stated that he has done most of the renovation work in this house and had “slapped” using an open palm on the wall causing the hole. The tenant stated that his

area of the wall does not have drywall, but instead a thin layer of plaster. The tenant reiterated that this was a weak point in the wall.

The landlord stated that due to the aggressive behaviour of the tenant, she fears for her safety. The landlord stated that the tenant was “exposing himself” to the landlord. The landlord stated that the tenant would show his genitals to the landlord causing her discomfort and uneasiness. The landlord stated that despite calling the police, no action was taken by the police. The landlord also stated that the tenant has been often looking into the landlord’s windows and standing in front of them. The landlord disputed both of these claims arguing that he walks by the landlord’s window while he is coming and going from the property. The landlord has referred to a text message from a third party who was a witness to the tenant “exposing” himself to the landlord. The landlord referenced the landlord’s evidence submission L32 a text message statement by C.D. It states in part,

So now the gloves are off. Now I won’t have mercy saying anything about him. All the times he sat there in his shots with his penis exposed ON PURPOSE JUST IN CASE YOU LOOKED. He really thought you were interested in him in a sexual manner. So that’s another thing you can mention. And I will 100% back you up on it....

ABSOLUTELY!!!! He did it every time you came down. And made comments about it, after you left, asking me if I though you looked and stayed longer so you could keep looking.

And that I will attest to without hesitation.

[reproduced as written]

During the hearing the landlord cancelled reasons #2 and #3 listed on the notice to end tenancy. The landlord stated that she wished to withdraw these reasons for cause listed on the notice dated January 19, 2021. As such, no further action is required for this portion of the landlord’s claim.

The landlord also claims that the tenant has breached a material term of the tenancy agreement by changing the locks without the permission of the landlord and failing to provide a key to the rental unit. The tenant disputes this claim stating that he did not change the locks but had “re-keyed” the locks without notifying the landlord. The tenant confirmed that he has not provided the landlord with a key.

The landlord claims that there is a “no smoking” clause in the tenancy agreement and the tenant has been seen smoking in the rental unit. The tenant stated that he keeps a

ice cream bucket to hold his cigarette ashes by the door. The tenant stated that he has smoked in the past where he has gone in and out of the rental unit while smoking.

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case I accept the undisputed affirmed evidence of both parties that the landlord served the tenant with a 1 month notice dated January 19, 2021 in person on January 19, 2021.

The landlord has claimed that the tenant has breached a material term of the tenancy agreement by changing the locks of the rental unit and smoking in the rental unit. The tenant has confirmed that although he did not change the locks, he has “re-keyed” the locks. I find that this is in essence the same as the tenant has confirmed that the landlord no longer has access to the rental unit that permission was not give by the landlord to change it. The tenant stated that no keys have been provided to the landlord.

The landlord has also stated that the tenant has been smoking in the rental unit which is contrary to the signed tenancy agreement. The tenant stated that he keeps an ice cream bucket by the door to hold his cigarette butts and ashes. The tenant confirmed in his direct testimony that he has gone in and out of the rental unit while smoking his cigarettes.

I find based upon the above evidence of both parties that the landlord has provided sufficient evidence of a breach of a material term of the tenancy. The tenant has confirmed that he has “re-keyed” the locks and did not provide a key to the landlord after being requested to do so. I also find that the tenant provided direct testimony that he often smokes outside and frequently goes in and out of the rental unit while smoking. On this basis, the landlord has provided sufficient evidence of a breach of a material term of the tenancy agreement.

As a breach of a material term has been found to have occurred, I fid that it is unnecessary for me to make a finding on the remaining reasons for cause.

The landlord’s 1 month notice to end tenancy dated January 19, 2021 is upheld. The tenant’s request to cancel the 1 month notice dated January 19, 2021 is dismissed

without leave to reapply. The landlord is granted an order of possession to be effective 2 days after it is served upon the tenant as the effective end of tenancy date has now passed.

The landlord is entitled to recovery of the \$100.00 filing fee.

### Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$100.00.

These orders must be served upon the tenant. Should the tenant fail to comply with these orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those Courts.

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 20, 2021

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Residential Tenancy Branch