



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NANAIMO AFFORDABLE HOUSING  
SOCIETY and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order of Possession for Cause, based on having served the Tenant with a One Month Notice to End Tenancy for Cause dated December 31, 2020 ("One Month Notice"), and to recover the \$100.00 cost of their Application filing fee.

Two agents for the Landlord, J.S. and G.B. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only persons to call into the hearing were the Agents, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Agents.

I explained the hearing process to the Agents and gave them an opportunity to ask questions about the hearing process. During the hearing the Agents were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent, J.S., testified that the Tenant was served with the Notice of Hearing documents by posting them on the rental unit door on April 13, 2021. The Landlord uploaded a photo of documents posted to the rental unit door as proof of service. I find

that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agents in the absence of the Tenant.

### Preliminary and Procedural Matters

The Agent provided the Landlord's email address in the Application and he confirmed it in the hearing. He also confirmed his understanding that the Decision would be emailed to the Landlord, mailed to the Tenant, and that any Orders would be sent to the appropriate Party in this manner.

At the outset of the hearing, I advised the Agents that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

### Background and Evidence

The tenancy agreement states, and the Agent confirmed that the fixed-term tenancy began on January 1, 2020, running to April 1, 2021 and it then operated on a month-to-month basis. The Agent confirmed that under the tenancy agreement, the Tenant was required to pay the Landlord a monthly rent of \$800.00, due on the first day of each month. The Agent confirmed that the Tenant paid the Landlord a security deposit of \$400.00, and no pet damage deposit, and that the Landlord still held the security deposit.

The Agents submitted a copy of the One Month Notice that was signed and dated December 31, 2020; it has the rental unit address, it was served by attaching a copy of the One Month Notice to the rental unit door on December 30, 2020. The One Month Notice has an effective vacancy date, automatically corrected by the Act to January 31, 2021. The ground for the eviction notice was a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. Details of the event were set out on the One Month Notice as follows:

Multiple violations of tenancy agreement including sections 24A & 24E. Extensive documentation of these violations. Extensive effort and time to allow Tenant to

correct behaviours without positive result. Evidence provided upon dispute.

Section 24A of the tenancy agreement states:

The tenants or the tenant's guest must not disturb, harass, or annoy other occupants of the residential property, the landlord or a neighbour.

Section 24E of the tenancy agreement states:

The Tenant, any person affiliated with the tenant or any member of the Tenant's family shall not engage in any criminal activity on the property, including but not limited to:

- i) Violence of any kind
- ii) Assault or threatened assault
- iii) Solicitation and related nuisance activity
- iv) Street gang activity
- v) Any drug related activity.

In the hearing, the Agent, J.S., said:

In the package there's a 4-page write-up. There are 19 pieces of evidence to verify the concerns we have as Landlords - a number of illegal activities, including soliciting and drug activities. The Tenant has on a number of occasions, failed to pay her cab drivers, which puts a bad name on the building, making it more difficult for other tenants to use those kinds of services.

Evidence also shows accounts in which we have had meetings to correct her behaviour. This is a 24-hour building – staff are on site to provide light support, although it's fairly independent living. Tenants have a responsibility to maintain their lifestyle. Ultimately, we are concerned about the safety of the property for tenants, all tenants, and the Tenant's actions in the evidence prevent other tenants from being able to have a reasonable lifestyle - a place to call home. We have a duty as a Landlord to make sure their rights under their tenancy agreements are upheld.

The Agent said:

There's a number of these incidents in the evidence package suggesting that the Tenant has a responsibility to not disturb or harass the Landlord – there are a

number of incidents, primarily an incident which shows the Tenant stealing a cell phone from a staff member. See photo evidence from the building security and an incident report from staff at the property. Our staff person, [G.B.] can also provide back up support for that situation. That's item 15 – is that incident. For our part, that's a disturbance of the Landlord.

In the Landlord's written submission dated April 15, 2021, the Landlord's CEO, A.B., said:

. . .

[The Tenant] has demonstrated that she is not willing/able to follow the rules of the property, and while ending tenancy is our last and least favourable option, it will be shown that there have been multiple attempts to address these issues with the tenant and none have proved successful.

[The Tenant's] actions are disruptive to other tenants and the staff of the building and her actions reflect poorly to the greater community and color the perspective that neighbours have of the building and its occupants.

Her repeated failure to pay her cab fares has made transportation more difficult for others. Her illegal acts on site destabilize the supportive atmosphere that is meant to aid tenants' independence and development.

As no one person should be afforded the ongoing right to risk others' general wellbeing, and housing – it is our responsibility to protect the property and the other 40 tenants. Therefore, we are seeking an Order of Possession for the unit.

. . .

The CEO goes on to list 19 items or examples of incidents of the Tenant's behaviour that led the Landlord to issue the One Month Notice. Some of these include:

**February 5, 2020 at 18:32 hours:**

Resident out to the hospital commons area by the restaurant to meet with the silver Buick, quick exchange. Noted for bringing criminal activity to the neighbourhood, in violation of the good neighbour clause.

TL's and management met with tenant. Tenant received copy of building policies and will receive follow up summary which she is aware of. Feb. 6/2020

The Landlord also submitted a copy of a letter dated **February 10, 2020** from [G.B.] to the Tenant which summarizes the meeting they had on February 6, 2020. The letter listed support networks that the Tenant may contact to maintain her tenancy at the residential property.

In an incident report dated **February 18, 2020**, the Landlord set out the following incident.

[The Tenant] used the courtesy phone and made what sounded like a score call for drugs. She stated in the conversation 'I only need one.' Staff cautioned her not to use the phone for drug calls. [The Tenant] requested writer call her a cab. Writer stated the phone number was on the wall for [the taxi]. When [the Tenant] returned she went to her apartment. The taxi driver rang the front desk. Writer spoke to the driver at the front door. He informed writer he had picked [the Tenant] up, driven her to the apartments on [address], waited for her at her request, drove her to the ... to get money, and then to [the residential property]. She racked up a \$30.00 dollar fare and did not pay the driver. The driver also mentioned she was using drugs in the back seat. . . . Writer attempted to ring tenant on the intercom. She did not respond. Taxi driver stated he was informing the RCMP. . . .

In an incident report dated **April 28, 2020**, the Landlord detailed the following:

1620 – Writer up on third floor helping another tenant. Writer heard [the Tenant] yelling her head off in [another tenant's] suite and it sounded like a heated argument which was not letting after approx. 10 mins. Writer decided to knock on the door to make sure all was ok. When writer knocked [the other tenant] answered and appeared fed up. He told writer that he had to go out but [the Tenant] would not leave. He mentioned something about blowjobs but writer told him that she was not engaging in discussions about sex and that it was none of writers business. [The Tenant] then started yelling louder at writer and [the other tenant] 'do not tell her anything, they want to know everything and do not tell her a thing'. Writer assured her that she was not there to get into their private discussion but to make sure they were safe and that [the other tenant] wanted to go out so she needed to leave his suite. [The Tenant] continued to yell at writer and got up from the chair she was sitting in, approaching writer. Writer backed up and told her she needed to go back to her suite. [The Tenant] continued to tell writer to 'get lost and not to talk to staff or say anything'. [The Tenant] was

aggressive, loud, arms waving and pointing, frowning and looked very substance affected. . . .

. . .

1645 – Tenant from second floor called down to support desk scared stating that the suite above her had someone screaming and throwing things and it seemed like they were being hurt. Writer and co-staff went up to listen and bumping could be heard in suite, angry stomping. Writer then went and listened on common patio. Writer could hear her throwing things, screaming, yelling, whining and growling. [The Tenant] was out of control and unclear if she was hurt, hurting herself or what was going on.

. . .

1813 [after staff called non-emergency RCMP at 1654] – Non Emerg RCMP showed up and checked on [Tenant]. She told him that she was fine and had been sleeping. Officer stated that it looks like she ripped a drawer or cupboard door off and threw it but she seemed calmer now. [The Tenant] then came down and apologized to staff. Writer said she just wanted to make sure she was ok, [the Tenant] acknowledged this and said she gets angry sometimes due to her line of work. Writer said that was understandable and that staff are here to talk if needed. She didn't want to talk but she said she knows we care and left the building.

In a letter to the Tenant from the Landlord's agents dated **June 12, 2020**, the agents said:

We would like to meet with you this coming Monday, June 15/2020 at 11:30am. Our building has received complaints from neighbours and other tenants regarding increased noise, traffic on and around our property and complaints from neighbouring properties about observed activities. We have tried to speak with you this week June 10<sup>th</sup> and June 11<sup>th</sup>/2020 to no avail even though you agreed verbally to meet with Team Leads.

Failure to attend puts your housing at risk. If you cannot attend at this time, please let us know an alternate time.

A handwritten note on this copy of the letter states: "TL's tried to talk to tenant and give her this letter twice on Jun 12/2020. She refused to come down even when she [said she] would."

The Landlord provided other incident reports such as those noted above, as well as

examples of the Landlord trying to help the Tenant to modify her behaviour and not lose her tenancy. These other incidents were dated: June 15, 2020, June 16, 2020, June 17, 2020, August 5, 2020 (which detailed and evidenced the Tenant stealing a cell phone from staff at residential property), September 23, 2020, October 15, 2020, October 23, 2020, October 29, 2020, December 8, 2020, and March 16, 2021.

As noted above, section 24 of the tenancy agreement includes the following:

24) Tenant Conduct

a) The tenants or the tenant's guests must not disturb, harass, or annoy other occupants of the residential property, the landlord or a neighbour.

b) Noise, or behaviour which in the reasonable opinion of the landlord may disturb the comfort of any occupant of the residential property or other person, must not be made by the tenant or the tenant's guest, nor any noise be repeated or persisted after a request to discontinue such noise or behaviour has been made by the landlord....

. . .

d) Common areas are to be used in a wise, safe, and reasonable manner by all occupants.

e) The tenant, any person affiliated with the tenant or any member of the tenant's family shall not engage in any criminal activity on the property, including but not limited to:

- i) Violence of any kind
- ii) Assault or threatened assault
- iii) Solicitation and related nuisance activity
- iv) Street gang activity
- v) Any drug related activity.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 47 of the Act allows the landlord to end a tenancy for cause:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

. . .

(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;

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. . . .

In this case, the Landlord alleged that the Tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. I find that the Landlord has proven on a balance of probabilities that the Tenant breached sections 24a) and e) of the tenancy agreement by being noisy, by making what sounds like drug purchase calls on the common telephone, by not paying cab drivers their fares, by appearing affected by substances, and by the other behaviours detailed in the Landlord's evidence.

When I consider all the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet their burden of proof on a balance of probabilities, and to support the validity of the One Month Notice. I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act as to form and content.

Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession. I, therefore, award the Landlord with an Order of Possession of the rental unit, **effective two days after service on the Tenant**, since the effective vacancy date of the One Month Notice has passed.

The Landlord is also awarded recovery of their **\$100.00** Application filing fee, pursuant



to section 72 of the Act. The Landlord is authorized to deduct \$100.00 once from the Tenant's \$400.00 security deposit in complete satisfaction of this award.

### Conclusion

The Landlord is successful in their Application for an Order of Possession, further to having served the Tenant with the One Month Notice. I find that the One Month Notice is valid and enforceable.

Given their success in this Application, I also award the Landlord with recovery of the \$100.00 filing fee. The Landlord is authorized to deduct \$100.00 once from the Tenant's \$400.00 security deposit in complete satisfaction of this award.

Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession **effective two days after the Tenant is deemed served** with this Order of Possession.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: May 04, 2021

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Residential Tenancy Branch