



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC, FFT**

### Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Landlord O.E., the tenant and the tenant's partner/assistant (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that landlord O.E. was served with this application for dispute resolution via registered mail; however, neither party could recall the dates. I find that the tenant's application for dispute resolution was served in accordance with section 89 of the *Act*.

The agent testified that landlord P.E. was served with this application for dispute resolution via registered mail. The tenant entered into evidence a photograph of the Canada Post Receipt for same in which the tracking number cannot be seen in full. Landlord P.E. entered into evidence a letter which states in part:

[Landlord O.E.] and I are in divorce proceedings at present since Oct. 2020. I would like to participate in the hearing however I am sure that you can understand the unusual circumstances here. Please accept this as my participation....

I find that landlord P.E. was sufficiently served with the tenant's application for dispute resolution, pursuant to section 71 of the *Act* as the above letter indicates knowledge of these proceedings.

Both parties agree that the tenant personally served the landlord with additional evidence on May 2, 2021.

The landlord did not enter any documents into evidence.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order. I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

#### Preliminary Issue- Amendment

The tenant only listed landlord P.E. on this application for dispute resolution. Landlord O.E. testified that she and landlord P.E. are in the midst of an acrimonious divorce.

Both parties agreed that they had a previous arbitration hearing on March 5, 2021. The March 5, 2021 decision states:

The tenant's application for dispute resolution named only landlord P.E. as a landlord. Landlord O.E. attended the hearing and testified that she is an owner of the subject rental property and is the landlord the tenant currently pays rent to. This was not disputed by the tenant. I find that landlord O.E. meets the definition of landlord set out in section 1 of the *Act*. Pursuant to section 64 of the *Act*, I amend the tenant's application to include landlord O.E. as a landlord.

Pursuant to my findings in the March 5, 2021 hearing, I find that landlord O.E. is a landlord as defined in section 1 of the *Act*. Pursuant to section 64 of the *Act*, I amend

the tenant's application to include landlord O.E. as a landlord. I caution the tenant to name both landlords in any future application for dispute resolution.

### Issues

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. If the tenant's application is dismissed or the landlord's Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act* of the *Act*?

### Background/Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in November 2018 and is currently ongoing. Monthly rent in the amount of \$1,200.00 is payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant to the landlords. A written tenancy agreement was signed by the tenant and landlord P.E. and a copy was submitted for this application. Landlord O.E. testified that the tenant entered into a new tenancy agreement with only landlord O.E. in October of 2020 and then later another tenancy agreement with only landlord P.E. The above tenancy agreements were not entered into evidence.

Both parties agree that landlord personally served the tenant with a One Month Notice to End Tenancy for Cause (the "One Month Notice") dated February 2, 2021. The One Month Notice was entered into evidence and states the following reasons for ending the tenancy:

- Tenant or a 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;
- 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;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The One Month Notice provides the following details of cause:

Tenant is smoking on the property. Has been told not to smoke, he signed that he doesn't smoke

Tenant has unreasonably interfere [sic] with landlords quiet environment.

Tenant has concurrently litters the environment with furniture, and garbage, he failed to comply to remove them.

Landlord O.E. testified that the tenant signed an addendum to the October 2020 tenancy agreement in which he agreed not to smoke on or in the rental property.

Landlord O.E. testified that the tenant is constantly smoking in and around the property. The tenant testified that he only smokes in the back alley, on City land, not on or in the property.

Landlord O.E. testified that the tenant constantly calls the police on her children. The agent testified that the landlord has five children and that if they all stomp on the floor for too long he has called the police to lodge a noise complaint, but that he does not constantly call the police.

Landlord O.E. testified that the tenant left a couch outside at the subject rental property and refused to remove it. The agent testified that landlord P.E. said that the tenant could leave the couch outside until the City removed it. Both parties agree that the couch has been removed.

Landlord O.E. testified that the agent and the tenant yell at her and harass her. The agent testified that landlord O.E. yelled at the tenant and herself when they served landlord O.E. with evidence for this hearing, and they yelled back.

The agent testified that the tenant has a minimal contact order against the landlord because the landlord grabbed the tenant. The contact order was not entered into evidence. Landlord O.E. testified that she did not grab the tenant.

The tenant entered into evidence a letter from landlord O.E. which states in part:

....[The tenant] advised me that he had a couch at the back of the house that needed to be removed. I advised him to move it when he could. [The tenant] had the [City] remove the couch as asked by me. I am aware that [the tenant] smokes cigarettes and he does his smoking in the Back Alley on [City] property. I am no longer on the property however I doubt that [the tenant's] cigarette smoking behaviour has changed. The [City] does not have a public cigarette smoking ban. We barbecued regularly in the summer with the usual smoke from the barbecue.

I am not in agreement with [landlord O.E.] evicting [the tenant] and as his landlord I say the eviction is to be rescinded. [The tenant] has lived [at the subject rental property] for over two years....It is also very difficult for me when [landlord O.E.] decides that she is going to hand out Eviction Notices that are not relevant. Wrongful Evictions by a Landlord come with consequences.....

### Analysis

I find that the One Month Notice was served on the tenant in accordance with section 88 of the *Act* as both parties agree that it was personally served on February 2, 2021.

Section 47 of the *Act* states:

**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.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

The parties provided opposing testimony as to where the tenant smokes. The landlord did not provide any evidence to support her testimony that the tenant smokes in and on the subject rental property. I find that landlord O.E. has not proved, on a balance of probabilities, that the tenant smoked on or in the subject rental property or that smoking was prohibited in the tenancy agreement.

Both parties agree that the tenant has called the police to complain about noise caused by the tenant's children. I find that the landlord has not proved, on a balance of probabilities that the calls to the police were unreasonable or harassing in nature or unreasonably frequent.

I find that the arguments described by the parties between the tenant and landlord O.E. are not serious enough to be grounds for eviction. I also note that in determining if a Notice to End Tenancy is valid, only events occurring before the Notice to End Tenancy is served on the tenant may be considered as events occurring after do not inform why the Notice to End Tenancy was served.

Based on the letter from landlord P.E. and the testimony of the tenant, I find that the tenant was permitted to store the couch on the property until the City picked it up.

The landlord did not provide any testimony regarding extraordinary damage caused by the tenant.

I find that none of the landlord's testimony has proved that the tenant has engaged in an illegal activity.

Pursuant to my above findings, I find that landlord O.E. has not proved that the:

- Tenant or a 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;
- 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;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.



I find that landlord O.E. has not substantiated her claims which the tenant has refuted. The landlord has not met the required burden of proof. I therefore find that the One Month Notice is cancelled and of no force or effect.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlords. Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlords.

### Conclusion

The One Month Notice is cancelled and of no force or effect.

The tenant is entitled on one occasion to withhold \$100.00 from rent.

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: May 17, 2021

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Residential Tenancy Branch