



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### 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.

The tenant and the landlord's agent (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 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.

The agent confirmed the landlord's email address for service of this decision and order. The tenant requested service via regular mail.

Both parties agree that the landlord was served with this application for dispute resolution, though the parties disputed the method of service. I find that the landlord was sufficiently served, for the purposes of this *Act*, with the tenant's application for dispute resolution, pursuant to section 71 of the *Act* because the landlord confirmed receipt of the tenant's application.

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 agent testified that the tenant used an abbreviated form of the landlord's name on this application for dispute resolution. Pursuant to section 64 of the *Act*, I amend the tenant's application to state the full name of the landlord.

### Issues to be Decided

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. 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*?

### Background and 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 on March 1, 2017 and is currently ongoing. Monthly rent in the amount of \$1,303.22 is payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenancy agreement addendum contains a one-page addendum that was signed by both parties. The addendum states in part:

No smoking on the property- ashtrays are in the lane and at city sidewalk of the entrance

Both parties agree that the agent personally served the tenant with a One Month Notice to End Tenancy for Cause with an effective date of April 1, 2021 (the "One Month Notice") on February 19, 2021. The tenant applied to cancel the One Month Notice on February 26, 2021.

The One Month Notice states the following reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site.
- 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.

The details of cause provided on the One Month Notice state:

Constant smoking by [the tenant] and his guests, effecting so many tenant, in particular an elderly lady right across the hall who has asthma and complains she cannot breath properly at times he is obviously smoking. Also the tenant right next door who complains he can not sleep, shortness of breath and tighnes in his chest and says his own appartment stinks.

There is also a parade of people comming to his appartment knocking loudly on his door, then being let in and staying for 30 or so seconds and leaving. (I will leave it so you to infer what is possibly transacting in these short visits) they also come to his back sliding glass door and most of these people are not wearing masks.

Thank you on behalf of all the tenants for your help in this matter.

[reproduced as written]

The agent testified that the primary reasons for serving the tenant with the One Month Notice was the constant smoking in the subject rental property as it significantly disturbs the other tenants of this non-smoking building. The agent testified that he is at the subject rental building daily and frequently smells smoke coming from the tenant's apartment. The agent entered into evidence complaints from other tenants about the tenant smoking at the subject rental property dated:

- March 12, 2018; and
- February 19, 2021.

The landlord testified that most tenants do not feel comfortable writing complaint letters and complain to him in person and that the tenant has been given many warning letters

from such occurrences. The landlord entered into evidence warning letters regarding the tenant smoking in the unit dated:

1. April 1, 2017,
2. July 21, 2017,
3. September 20, 2017,
4. March 13, 2018,
5. March 26, 2018, and
6. March 11, 2020.

After the landlord testified to the above, I informed the tenant that it was now the tenant's turn to respond to the landlord's testimony. The tenant did not provide any testimony about smoking whatsoever and did not directly dispute any of the landlord's testimony.

The tenant testified the agent has accused him of stealing bikes and has made him remove his bikes from his patio while letting other tenants keep their bikes on their patios. The tenant testified that he has no "retribution" against the landlord's letters.

The tenant testified that the landlord does not respect him and has sworn at him in front of a contractor and made comments about him being a drug dealer in front of his family. The tenant testified that he is 64, on disability with a walker and is not doing drugs and going to night clubs. The tenant testified that it is hard to battle the landlord's complaints.

### Analysis

Section 47(1)(d)(i) states that a landlord may end a tenancy by giving notice to end the tenancy if 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.

Based on the landlord's testimony, the complaint letters and the warning letters, I find that the tenant regularly smokes in the subject rental property contrary to the tenancy agreement addendum. I note that the tenant did not directly dispute this fact. I accept the agent's testimony that he has received numerous in person complaints about the tenant smoking at the subject rental property. I find that the tenant has been provided with many warnings and many opportunities to change his smoking habits but has failed to do so. I find that breathing in second hand smoke over the course of several years

significantly interfered with and unreasonably disturbed the landlord and other tenants of the subject rental property, contrary to section 47(1)(d)(i) of the *Act*. I therefore uphold the One Month Notice and dismiss the tenant's application for dispute resolution.

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the One Month Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Since I have dismissed the tenant's application and upheld the landlord's One Month Notice, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: June 03, 2021

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Residential Tenancy Branch