



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Cap J Properties Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on August 17, 2021. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47 (the Notice).

Both parties attended the hearing and provided affirmed testimony. All parties were given a full opportunity to be heard, to present evidence and to make submissions. Neither party raised any issues with respect to service of the Notice of Hearing, or the documentary evidence each party was relying upon during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the tenant entitled to have the Notice cancelled?
  - If not, is the landlord entitled to an Order of Possession?

### Background and Evidence

The Tenant acknowledged receiving the Notice on April 3, 2021. The Notice indicates the following reasons for ending the tenancy on the second page:

- Non-compliance with an order under the legislation within 30 days after the Tenant received the order or the date in the order.

Under the “details of cause” section of the Notice, the Landlord explained that “As per file number XXXXXXXXX with our original hearing date of April 3, 2020, and subsequent order, the respondents suite has not been maintained in a reasonably good condition so this is serving one month’s notice for cause pursuant to section 47(1)(i) of the Act.

The Landlord explained that the tenancy started in April 2019, and the Tenant has shown that she has a hoarding disorder, which is putting the property, and the building at risk. The Landlord stated that they had a hearing over a year ago, whereby the Tenant applied to cancel a different one month notice for similar issues. The parties came to a mutual agreement to continue the tenancy but under specific terms, as follows:

- *the Tenant will have the rental unit professionally cleaned by April 30, 2020;*
- *the rental unit will be reasonably clean by April 30, 2020;*
- *the rental unit will be kept reasonably clean after April 30, 2020;*
- *the Landlord may inspect the rental unit every two weeks to ensure it is being kept reasonably clean; and*
- *the Landlord may serve another One Month Notice to End Tenancy for Cause if the rental unit is not kept in reasonably clean condition after April 30, 2020.*

The arbitrator as part of that decision issued the following order:

*I Order the Tenant to maintain the rental unit in reasonably clean condition after April 30, 2020. Both parties are hereby advised that the Landlord may serve the Tenant with a One Month Notice to End Tenancy for Cause, pursuant to section 47(1)(i) of the Act, if the Tenant breaches this Order.*

The Landlord stated that during COVID, they held off on doing inspections, until March 31, 2021. On March 31, 2021, the Landlord inspected the rental unit and took photos of the condition. The Landlord explained that although the Tenant cleaned up the rental unit after the last hearing, she has let the mess get worse than what it was initially. The Landlord stated that this is a blatant breach of the order issued by the Arbitrator, and is the reason the Notice was issued.

The Tenant does not refute that she had a hoarding issue, and that she has let the rental unit get very messy on multiple occasions. The Tenant stated that the Landlord

never came to inspect, as he should have, during the last year, so they have not complied with the orders made by the arbitrator, either. The Tenant feels that if the Landlord had come to inspect sooner, she could have mitigated better. The Tenant also feels the Landlord failed to accommodate her hoarding disorder, and her medical needs. The Tenant stated that she has cleaned up the unit, since this Notice was issued, and has engaged proper supports for herself to prevent this from happening again.

### Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings with respect to whether there are sufficient grounds to end the tenancy.

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

I have reviewed the evidence and testimony on this matter. I acknowledge that the Tenant feels the Landlord has not sufficiently accommodated her hoarding disorder. However, I note the Landlord also has the duty to protect the building, and other occupants from risks associated with this issue. I also note the Landlord gave the Tenant a second chance to keep the rental unit clean, without success. I find the Landlord has to balance the needs and interests of others in the building, with the needs and interests of the Tenant, and ultimately, the Landlord did try to accommodate on some level. I am not satisfied he was required to accommodate any further.

The settlement agreement made between the parties on April 3, 2020, clearly states that the Tenant will keep the unit reasonably clean after April 30, 2020. As per the photos taken on March 31, 2021, this did not happen. I find the rental unit, as shown in the photos was not reasonably clean, and the Tenant directly violated the Order from the Arbitrator last April. I note the Tenant feels the Landlord also failed to follow the orders made in the settlement agreement, by not inspection regularly. However, I note the settlement agreement specifies that the Landlord may inspect the rental unit, not that the Landlord must. This was an option, not an order. Ultimately, I find the Tenant violated the Order, issued under this Legislation.

Overall, I find the Landlord has sufficient cause to issue the Notice. The Tenant's application to cancel the Notice is dismissed. The tenancy is ending, under the Notice, as described below.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form. I find that the Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession. I find the Landlord is entitled to an order of possession effective **August 31, 2021, at 1pm**, after service on the Tenant.

Since the Tenant was not successful with her application, I decline to award her recovery of the filing fee.

### Conclusion

The Tenant's application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective **August 31, 2021, at 1pm**, after service on the Tenant. This order must be served on the tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: August 17, 2021

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Residential Tenancy Branch