



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC FFT

### Introduction

The tenants disputed a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 47(4) of the *Residential Tenancy Act* (“Act”). It should be noted that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, the arbitrator must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord’s notice to end tenancy complies with the Act. In addition, the tenants sought recovery of the cost of the application filing fee, pursuant to section 72 of the Act.

Only the landlord and their interpreter attended the hearing on August 26, 2021 at 9:30 AM. Neither tenant attended the hearing.

### Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Are the tenants entitled to recover the cost of the filing fee?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below. As the tenants did not attend the hearing, I need not consider their evidence.

The tenancy began on January 15, 2021. Monthly rent is \$1,400 and the tenants paid a \$700 security deposit and a \$700 pet damage deposit. A copy of the written Residential Tenancy Agreement (the “Agreement”) was in evidence. It should be noted that at the bottom of page 2 of the Agreement there is the notation “No drugs. No smoking”.

The landlord testified that they served the Notice in-person to the tenants on April 18, 2021. A copy of the Notice was in evidence. There are four grounds indicated on the Notice as to why it was issued; only one of those grounds will be addressed, namely, the tenant failed to comply with a material term of the tenancy agreement and did not correct the failure within a reasonable time after the landlord gave written notice to correct the situation.

The landlord confirmed that the information contained in the Notice about the many instances of the tenants smoking on the property, including in the rental unit, was an accurate and correct description of the events which lead to her issuing the Notice. The landlord testified that she sent the tenants a few text messages about the no smoking rule, before having to issue the Notice. Last, the landlord confirmed that there is indeed a “no smoking” term of the Agreement.

### Analysis

When a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus (that is, the obligation) is on the landlord to prove, on a balance of probabilities, one or more grounds on which the Notice was given.

The Notice in this dispute was issued under four grounds, one of which was addressed in the hearing. Specifically, [section 47\(1\)\(h\)](#) of the Act, which states that

A landlord may end a tenancy by giving notice to end the tenancy if one or more of following applies: [. . .] 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.

Based on the landlord’s undisputed oral and documentary evidence, I find as a fact and law that the tenants failed to comply with the material term of the tenancy agreement regarding the smoking prohibition, and, that they failed to correct the situation within a reasonable time after the landlord gave them written (by text message) notice to do so. As such, I find that the landlord has met the onus of proving this ground on which they issued the Notice. (I need not address the remaining three grounds, as only one ground needs to be proven in order for a notice to end tenancy to be upheld.)

As the landlord has met their onus of proving the ground on which they issued the Notice, I therefore dismiss the tenants’ application for an order cancelling the Notice, without leave to reapply. Accordingly, the Notice dated April 18, 2021 is upheld.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must be signed and dated, include 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. Having carefully reviewed the Notice, I find that it meets the requirements under section 52 of the Act. While the landlord neglected to sign the Notice, I do not find that this omission invalidates the Notice (see [section 10\(2\)](#) of the Act).

Section 55(1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their application is dismissed, or the landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with section 52 of the Act. Here, as the tenants' application is dismissed and the Notice is upheld, I therefore grant an order of possession to the landlord. A copy of this order is issued in conjunction with this decision, to the landlord.

### Conclusion

### **I HEREBY:**

- 1. dismiss the tenants' application, without leave to reapply; and**
- 2. grant the landlord an order of possession, which must be served on the tenants and which is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.**

This decision is made on delegated authority under section 9.1(1) of the Act

Dated: August 26, 2021

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Residential Tenancy Branch