



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 900733 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

The tenant applied for dispute resolution on May 4, 2021 seeking an order to cancel the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”). They also applied for reimbursement of the filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on September 10, 2021.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The tenant, their representative, and the agent of the landlord (the “landlord”) attended the hearing. Each was provided the opportunity to present oral testimony and make submissions during the hearing.

### Preliminary Matter

At the outset of the hearing, the landlord (who is the respondent here) confirmed they received the single piece of evidence provided by the tenant as documentary evidence.

The landlord stated they supplied a USB and paper copies of their evidence to the tenant in person at the rental unit. This was after they verified with the Residential Tenancy Branch that the final date for service of evidence was September 1, 2021. They received a message from the tenant’s family member requesting the same documents be emailed to them. In the hearing the landlord confirmed they received this email on September 2 at 12:13pm.

The representative for the tenant in the hearing stated they received nothing from the landlord as evidence. This was despite the application form stating the tenant’s “Address for Service of Documents” as that of their representative, and not the rental

unit. The landlord confirmed the Notice of Dispute Resolution document states the tenant's name and the "dispute address" as that of the rental unit.

The *Residential Tenancy Branch Rules of Procedure* are in place to ensure a fair, efficient and consistent process for resolving disputes between parties. The definition of "Serve" is "the formal legal manner of giving a party required documents and evidence as set out in the *Act*".

Rule 3.16 provides that "the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the *Act* and these Rules of Procedure."

The *Act* s. 89 governs the giving or serving of documents generally. This provides in s. 89(a) that documents must be given to a person "by leaving a copy with the person".

I find the provisions of s. 89 allow for the method of service used by the landlord here. The message from the tenant's family member the next day confirms that the landlord gave the material to the tenant directly. Though the tenant through their representative objected to this, I find the *Act* provides for both documents being given to or served by other means on a person. In this situation, I find the material being given to the tenant directly is allowed and acceptable for the service provisions of the *Act*. I find an "Address for Service of Documents" is not necessary in this situation and provides for an alternative where it is not possible to give documents directly to an individual.

With this finding that the landlord effected service in an appropriate and timely manner in line with the provisions of the *Act*, all evidence provided by the landlord receives full consideration where necessary below.

#### Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel or withdraw the One Month Notice?

If unsuccessful in this Application, is the landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to s. 72 of the *Act*?

### Background and Evidence

The landlord presented the tenancy agreement signed by the tenant and then-management for this tenancy that started on March 12, 2015. This shows the rent amount starting at \$805; over the course of the tenancy this increased to \$872.

The landlord issued the One-Month Notice on April 27, 2021, for the final move-out date of May 31, 2021. A Proof of Service document in their evidence shows service on that date, with the signature of the tenant confirming they received this delivery by hand.

The One-Month Notice bears the details: “[The tenant] has been repeatedly having outbursts all night which is causing a disturbance to other tenants and affecting their quiet enjoyment, we believe he needs special care but have no next of kin contact numbers.” And: “We receive daily complaints and have warned [the tenant] continuously.”

In their documentary evidence, the landlord provided a written complaint from another building resident. This notes “a living hell for the past several years.” This is “screaming. . . at all hours, banging and slamming doors. . . jumping or falling so hard. . .” This lists 11 separate instances from October 23, 2019 through to June 2, 2021.

Accompanying this are three separate video recordings. These show the interior of a rental unit. Sounds of shouting and banging are audible throughout and each video is time- and date-stamped to show the late hours of each incident.

In the hearing, the landlord presented that these incidents started in 2019, with multiple complaints. The chief source of information to the landlord was the building resident who provided the written complaint; the landlord clarified that no other tenants have been complaining. The owner – as distinct from the landlord’s agent here in the hearing – spoke to the tenant in the past about these outbursts.

The landlord here stated they spoke to the tenant personally on three or four occasions about the outbursts. The landlord here also said they had direct communication with the tenant’s family member regarding these complaints, and asked the tenant personally to connect with family members for assistance.

The tenant – via their representative in the hearing – reiterated that they have lived in the rental unit for 6 years. They were only contacted the first time about this on July 31<sup>st</sup> this year; therefore, what the landlord describes about contact being made is not quite true. They maintained they had never been reported on any incidents in the past.

They also stated the unit is now worth around \$1,500 per month at current market value. This means the landlord is trying to evict the tenant in order to re-rent the unit at a much higher value.

### Analysis

The *Act* section 47(1) contains the following provisions:

- (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,

Following this, s. 47(4) states that within 10 days of receiving a One-Month Notice a tenant may dispute it by filing an Application for Dispute Resolution.

In this case, the One-Month Notice was issued pursuant to s. 47 and I accept the landlord's evidence that they served this document to the tenant on April 27, 2021.

When a landlord issues a One-Month Notice and the tenant files an application to dispute the matter, the landlord bears the burden of proving they have grounds to end the tenancy and must provide sufficient evidence to prove the reason to end the tenancy. This is set out in the *Residential Tenancy Branch Rules of Procedure* Rule 7.18.

For s. 47(1)(d)(i), I find the landlord's evidence shows significant interference with another occupant. These were ongoing incidents, recorded by the resident in the adjacent unit – this shows a consistent pattern to the incidents, occurring in the night at unacceptable hours. The video evidence bears out the fact that the incidents were loud and disturbing. I give greater weight to this evidence, and I conclude they are interfering with and unreasonably disturbing that other occupant.

I accept the affirmed testimony of the landlord that they spoke to the tenant directly about this problem. The tenant did not present sufficient evidence or testimony to show that they had no knowledge of this problem until the landlord issued the One-Month Notice.

The tenant did not present evidence to either show the incidents did not happen or were exaggerated. The tenant also did not make any statement of acknowledgement that there was an issue. There was thus no commitment going forward to be mindful of social norms and other tenant's right to quiet enjoyment. Nor was there any pledge to seek assistance from family members or other means.

In sum, the nature of the problem for some time prior to the landlord issuing the One-Month Notice is in the evidence; this shows a problem that is recurring and severe. I find the tenant was aware of the issue – I give more weight to the evidence of the landlord on this point. I accept the landlord's statements as fact that they discussed the issue openly and attempted to arrive at a solution.

The *Act* s. 55(1) states that if a tenant applies to dispute the landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld, the landlord must be granted an order of possession if the document complies with all the requirements of s. 52 of the *Act*. On my review, the One-Month Notice here contains all the required elements set out in s. 52.

By this provision, I find the landlord is entitled to an Order of Possession and the tenancy shall end. The tenant's Application here is dismissed without leave to reapply.

Because they were not successful in their Application, the tenant is not entitled to reimbursement of the filing fee.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** 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 s. 9.1(1) of the *Act*.

Dated: September 15, 2021