



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, MNDCT, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. Landlord CT was assisted by advocate GT (the landlord). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

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 and the landlord has issued a notice to end tenancy that is compliant with the Act.

#### Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

#### Issues to be Decided

Is the tenant entitled to:

1. Cancellation of the Notice?
2. An authorization to recover the filing fee?

If the tenant's application is dismissed, is the landlord entitled to an order of possession?

#### Background and Evidence

While I have turned my mind to the testimony and evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

Both parties agreed the tenancy started on April 01, 2019. Monthly rent is \$925.00, due on the first. The tenancy agreement was submitted into evidence. It states:

1. The Landlord agrees rent to the Tenant the basement suite, municipally described as [redacted for privacy] (the "Property"), for use as residential premises only. The Property is more particularly described as follows; 1 bedroom furnished suite kitchen, living room, bedroom, and bathroom kitchen stove, fridge, dish washer, utilities included, wifi internet, washer and dryer. Rear entrance use of garden & heated pool and partial use of garage and one space in carport. Neither the Property nor any part of the Property will be used at any time during the term of the Lease by tenant for the purpose of carrying on any business, profession or trade of any kind, or for the purpose other than as a private single-family residence.

[...]

5. The tenant agrees and acknowledges that the Property has been designated as a smoke-free living environment. The tenant and members of the Tenant's household will not smoke anywhere in the Property nor permit any guests or visitors to smoke in the Property.

The tenant affirmed he signed the tenancy agreement and that he was aware of clauses 1 and 5. At a later point in the hearing the tenant stated he signed the tenancy agreement under duress.

The landlord attached the Notice to the tenant's front door on May 28, 2021. The tenant confirmed receipt of the Notice on May 28, 2021. The reasons to end the tenancy are:

- The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The details of the Notice are:

Tenant is in breach of multiple terms of the tenancy agreement; I have given him two written notices over the last nine months (Aug. 4, 2020 and May 5, 2021) and he has failed to remedy the issues despite being given ample time to do so. Since July 2020, tenant has been using areas in my home/property not specified in the tenancy agreement and has refused to remove his furniture and personal belongings from the studio suite in my home, pool room, and carport. Tenant has been using the pool room as a smoking room and for storage of personal items and empty bottles. Tenant has also been asked not to smoke in the garage or carport as I have [redacted for privacy]. Tenant has been using carport for storage and has multiply vehicles parked on my property that block the carport and driveway, and impede visitor/delivery access to my home. In response, tenant has been confrontational, aggressive, and disrespectful in person, on the phone, and through email on various

occasions. I no longer feel comfortable dealing with him directly or having him in my home.

The Notice is dated May 28, 2021 and the effective date is June 30, 2021. The tenant continues to occupy the rental unit. The tenant submitted this application on June 03, 2021.

The landlord testified the tenant rents the basement suite (the rental unit), there is a studio basement suite next door to the tenant's rental unit and the landlord lives on the main floor.

The landlord said the tenant has been smoking marijuana and tobacco in the pool room and outside the rental unit in the carport. Landlord CT affirmed she can feel the tenant's smoke pollution inside her house, the smoke pollution disturbs her and it is bad for her health, as she has a pulmonary disease. The tenant stated he has been smoking in the pool room since the first winter after the tenancy started and outside the rental unit.

The carport has two parking spaces, and the tenant has been occupying both of them with his belongings, a second vehicle and a motorcycle since July 2020. The landlord testified the tenant has been storing his personal belongings (including tires and tables) in the carport and the garage. The landlord submitted photographs taken in July and August 2020 and May 05, 2021 showing tires, furniture, a vehicle and a dune buggy in the carport. The landlord said the tenant's belongings are blocking her access to the house and are occupying more than half of the garage. The landlord rented the second parking space in the carport to a neighbour before the tenancy started and cannot rent it anymore because the tenant is occupying it.

The tenant affirmed he removed most of his belongings from the carport.

The landlord stated she verbally authorized the tenant to put new furniture in the studio suite in the summer of 2019 and asked him to remove the furniture in August 2020.

The tenant confirmed receipt of the written warning dated May 05, 2021:

As per the lease, this is a smoke-free environment. I ask that you and/or visitors please refrain from smoking in the pool room, garage, or carport, as I have previously mentioned, the smoke affects my health as I have [redacted for privacy].

The landlord testified she gave several verbal warnings between the first and second written warnings and the tenant continues to smoke in the pool room and the carport.

The landlord submitted into evidence a letter from a neighbour dated August 26, 2021:

[landlord] is 78 years old and is scared of him as he drinks and smokes, which she doesn't like either. He has interfered in personal matters that are not his business i.e. a friend wanted to park her boat at [landlord's] and made a big stink about it. He compromises her security by constantly leaving her gate open.

### Analysis

The tenant confirmed receipt of the Notice on May 28, 2021 and submitted this application on June 03, 2021. I find that the tenant's application was submitted before the ten-day deadline to dispute the Notice, in accordance with Section 47(4) of the Act.

According to R. v. Ryan, 2013 SCC 3, duress requires:

[81] The defence of duress, in its statutory and common law forms, is largely the same. The two forms share the following common elements:

- There must be an explicit or implicit threat of present or future death or bodily harm. This threat can be directed at the accused or a third party.
  - The accused must reasonably believe that the threat will be carried out.
  - There is no safe avenue of escape. This element is evaluated on a modified objective standard.
  - A close temporal connection between the threat and the harm threatened.
  - Proportionality between the harm threatened and the harm inflicted by the accused. The harm caused by the accused must be equal to or no greater than the harm threatened. This is also evaluated on a modified objective standard.
  - The accused is not a party to a conspiracy or association whereby the accused is subject to compulsion and actually knew that threats and coercion to commit an offence were a possible result of this criminal activity, conspiracy or association.
- Based on the tenant's vague testimony, I find the tenant was not under duress when he signed the tenancy agreement.

The tenant's testimony about duress was vague. Based on the tenant's testimony, I find the tenant was not under duress when he signed the tenancy agreement and that he was aware of clauses 1 and 5.

Based on the tenancy agreement and the tenant's testimony, I find the tenant was aware that he could not smoke in the rental unit and the common areas, such as the pool room. The tenancy agreement has a very specific language: "the property has been designated as a smoke-free living environment."

I accept the undisputed testimony that the tenant has been smoking in the pool room and outside the rental unit since the first winter after the tenancy started. The landlord warned the tenant in writing on May 05, 2021 and the tenant continued to smoke in the pool room. I find that the tenant's action of smoking in the pool room significantly interfered with and unreasonably disturbed the landlord.

Section 47(1) of the Act states:

(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,

I therefore find the landlord is entitled to end this tenancy, pursuant to section 47(1)(d)(i) of the Act. I dismiss the tenant's application without leave to reapply.

As the Notice is confirmed, I make no findings regarding the other reasons cited by the landlord to end the tenancy.

I find the form and content of the Notice complies with section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date and is in the approved form. I confirm the Notice and find the tenancy ended on June 30, 2021.

Based on my findings noted above, pursuant to section 55(1) of the Act, I find the landlord is entitled to an order of possession effective two days after service on the tenant.

I warn the tenant that he may be liable for any costs the landlord incurs to enforce the order of possession.

As the tenant was not successful, the tenant must bear the cost of the filing fee.

Conclusion

I dismiss the tenant's application to cancel the Notice without leave to reapply.

I grant an order of possession to the landlord effective two days after service of this order. 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: October 05, 2021

---

Residential Tenancy Branch