



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CALLAHAN PROPERTY GROUP  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

Tenant: CNC  
Landlord: OPC, FFL

### **Introduction**

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding a tenancy.

The Tenant applied for:

- an order to cancel a One Month Notice to End Tenancy for Cause, dated June 30, 2021 (the One Month Notice).

The Landlord applied for:

- an order of possession, having served the Tenant with the One Month Notice; and,
- an order to recover the filing fee.

The Tenant and the Landlord were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. A witness for the Tenant was present at the beginning of the hearing, but was excused until they were called on to testify. The parties were advised of the Residential Tenancy Branch (RTB) Rules of Procedure Rule 6.11 prohibition on recording dispute resolution hearings.

No issues with respect to service were raised by the parties during the hearing.

The RTB provided the Tenant with the Notice of Dispute Resolution Proceeding (NDRP) on July 26, 2021. The Tenant did not recall when they served the NDRP and their evidence on the Landlord. The Landlord testified the Tenant served their NDRP and evidence in person on July 26, 2021.

The RTB provided the Landlord with their NDRP on July 26, 2021. The Landlord testified they served their NDRP and evidence on the Tenant in person and by registered mail on July 26, 2021; the Tenant confirmed receipt. I find the parties served in accordance with section 89 of the Act.

#### Preliminary Matter – Application Submission Date

A review of the RTB's case management system shows the Tenant filed a paper application for dispute resolution on July 2, 2021, and their fee waiver was accepted.

On July 20, 2021, RTB staff note there are issues with the application, such as the rental unit and the Tenant's last name being omitted, and the Tenant's address being entered in the wrong spot on the form. RTB staff left a voicemail for the Tenant to call back and discuss the application issues. The Tenant called the RTB on July 22, 2021, and was informed of the issues with the application, and the procedure to update it. On July 23, 2021, the Tenant visited a Service BC office and updated their application. On page 2 of the Notice of Dispute Resolution Proceeding, July 23, 2021 is recorded as the date the application was submitted.

RTB Rule of Procedure 2.6 states:

The Application for Dispute Resolution has been made when it has been submitted and either the fee has been paid or when all documents for a fee waiver have been submitted to the Residential Tenancy Branch directly or through a Service BC Office. The three-day period for completing payment under Rule 2.4 is not an extension of any statutory timelines for making an application.

If payment is not completed or if all documents for a fee waiver are not submitted within three days as required, the application will be considered abandoned. To pursue the claims, the applicant must submit a new application—this does not provide an extension of time for any statutory timelines.

Pursuant to Rule 2.6, I find that because the Tenant's fee waiver was accepted on July 2, 2021, the Tenant submitted the application for dispute resolution on July 2, 2021, within the legislated deadline to dispute the One Month Notice.

### Issues to be Decided

Is the Tenant entitled to an order to cancel the One Month Notice?

If not, is the Landlord entitled to an order of possession?

Is the Landlord entitled to the filing fee?

### Background and Evidence

The parties agreed on the following particulars of the tenancy. It began on August 1, 2010; rent is \$738.00, due on the first of the month; and the Tenant paid a security deposit of \$300.00 and a pet deposit of \$220.00, which the Landlord still holds.

The Landlord testified they served the One Month Notice on the Tenant in person on June 30, 2021, which the Tenant confirmed. The Notice is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reasons for ending the tenancy, and is in the approved form. The One Month Notice indicates the tenancy is ending because the Tenant or a person permitted on the property by the Tenant has 1) significantly interfered with or unreasonably disturbed another occupant or the Landlord; and 2) seriously jeopardized the health or safety or lawful right of another occupant or the landlord. The Details of Causes section on page 3 of the One Month Notice references a 2019 final breach letter and a violent incident on June 28, 2021, in which the Notice states the Tenant allegedly bit and scratched another tenant, and propped open the front door of the property, blocking an emergency exit. It notes that the RCMP were called by the Tenant, who stated they were assaulted by another tenant, and that the RCMP member found the Tenant was the instigator, as it was the other tenant who bore visible injuries. A copy of the One Month Notice was submitted as evidence by both parties.

The Landlord testified that in 2018, letters had been sent by the Landlord to the Tenant, regarding the upkeep of their unit and the Tenant disturbing neighbours. The Landlord testified that a final warning breach letter was sent to the Tenant in July 2019, due to the Tenant's aggressive behaviour and verbal abuse toward a previous resident manager. A copy of the letter was submitted as evidence. The letter states: "... any further breach of your Lease Agreement will result in a Notice to End Tenancy for Cause immediately. You are hereby requested to conduct yourself accordingly in a prudent and responsible manner."

The Landlord testified that the Tenant was involved in a violent incident with a male tenant on June 28, 2021. The Landlord testified that the male tenant, who uses a power

wheelchair, came into the lobby of the residential property, finding that the Tenant's walker was propping open the front door. Another tenant, MR, was also in the lobby. The Landlord testified that, as it was a hot day, the male tenant asked the Tenant why they were letting the hot air into the building. The Landlord testified that the Tenant became angry, grabbed the male tenant, and bit him on the knuckle. The male tenant got control of his wheelchair, and the Tenant grabbed him by the face and scratched him. The male tenant went to the hospital, and the Tenant called the RCMP. The Landlord testified that as the male tenant bore scratches and a bite mark, the RCMP member had determined that the male tenant was the victim, not the Tenant. The Landlord submitted as evidence an incident report email dated June 29, 2021 and written by the resident manager, and an email dated August 4, 2021 from the male tenant, describing the incident. The Landlord clarified that the resident manager did not witness the incident; the resident manager's information source for the incident report email had been the male tenant involved. Both documents note that before the physical altercation began, the knob on the control stick of the male tenant's wheelchair came off, reducing his ability to steer the wheelchair.

The Tenant testified that on the day of the incident, a hot day, she entered the lobby, opened the front door to get a breeze, and sat with a woman whom she had not met before. A male tenant in a wheelchair entered the lobby, and, in a confrontational way, inquired why the door was open. The Tenant testified that she responded, and the male tenant approached her. When he got close enough, he began punching the Tenant in the head. The Tenant testified they went into a fetal position in the chair they had been sitting in. The Tenant testified the male tenant split their lip, and that is how he got a cut on his fist. The Tenant explained that they only have their four bottom front teeth. The Tenant testified they then put their feet up and pushed the male tenant with both feet, causing him to fall back. The Tenant testified the male then took the Tenant's walker outside and was smashing it against a wall. The Tenant testified they approached and were trying to get their walker back, but needed to hold on to something for balance. The Tenant testified that in reaching out, they accidentally ripped the male's shirt. The Tenant testified that as they were still attempting to get their walker from the male, they thought to scratch his face, which they did. The Tenant stated the male then released the Tenant's walker, and departed.

The Tenant called a witness, MR, the other tenant who was in the lobby at the time of the altercation. MR stated that on June 28, 2021, they were sitting in the lobby with the Tenant, whom they had never previously met, when the male tenant came around the corner at high speed, ran straight into the Tenant's legs, then began hitting the Tenant in the face with his fist.

A written statement from MR, dated July 26, 2021, was submitted by the Tenant as evidence. In the statement, MR wrote that they witnessed the whole event when the male tenant drove his scooter into the Tenant. The witness wrote that the male punched the Tenant repeatedly. The witness stated that all the Tenant did was protect themselves.

Given the opportunity to rebut, the Landlord noted there were inconsistencies between the statements from the Tenant and the witness about the incident, such as about the Tenant's location. I also recognize here that during the hearing, some providing testimony referred to the male tenant's motorized assistive device as a power wheelchair, and some referred to it as a scooter.

### Analysis

Section 47 of the Act permits a Landlord to end a tenancy for cause. Pursuant to Rule 6.6 of the RTB Rules of Procedure, when a tenant disputes a notice to end the tenancy, the burden is on the landlord to prove the reason for which they seek to end the tenancy. In this case, in order to end the tenancy, the Landlord must prove, on a balance of probabilities, that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord; or, seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Based on the evidence before me, and on a balance of probabilities, I make the following findings.

I find that the Landlord served the Tenant the One Month Notice in person on June 30, 2021, the day the Tenant received it. I find the One Month Notice was served in accordance with section 88 of the Act, and meets the form and content requirements of section 52.

I place little weight on the evidence regarding incidents in 2018 and 2019, considering the time that has passed. I understand from the Landlord's testimony and the Details of Causes on the One Month Notice, that the June 28, 2021 incident was what prompted the Landlord to serve the Tenant with the One Month Notice.

However, I accept the testimony from the Tenant and their witness, and the witness's written statement, that the Tenant did not instigate the physical violence on June 28, 2021. The incident was not witnessed by an agent of the Landlord, the Landlord did not

provide witness testimony, and the Tenant's evidence was supported by the testimony and written statement of a witness, MR.

Therefore, I find the Landlord has failed to prove, on a balance of probabilities, the reasons for the One Month Notice to End Tenancy for Cause. The Notice is cancelled, and the tenancy will continue until it is ended in accordance with the Act.

As the Landlord has been unsuccessful in their application, I decline to award them the filing fee, in accordance with section 72 of the Act.

### Conclusion

The Tenant's application is granted; the One Month Notice is cancelled.

The Landlord's application is dismissed.

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: November 15, 2021

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Residential Tenancy Branch