



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Lu'ma Native BCH Housing Society and [tenant  
name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

Landlord: OPC  
Tenant: MT, CNC

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession. The tenant sought more time to cancel a notice to end tenancy and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by three agents for the landlord, the tenant and his advocate.

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on August 20, 2021 in accordance with Section 89. The landlord acknowledged receipt of the tenant's application.

The landlord testified that the tenant was served with notice hearing documents and evidence in two packages. The first package, including the notice of hearing documents, was served by registered mail on July 30, 2021. The second package was sent by registered mail on October 5, 2021. The landlord provided registered mail tracking numbers. With permission of both parties, I reviewed the tracking information online from Canada Post.

The tenant testified that he had not received either package from the landlord. He stated that while he attempted to retrieve the first package Canada Post would not release it to him as he didn't have proper identification. He stated that he signed for the package, but they would not give it to him. He also testified he never received anything in regard to the second package.

Canada Post records that the first package mailed on July 30, 2021 was picked up and signed for by the tenant on August 14, 2021. In regard to the package mailed by the landlord on October 5, 2021 Canada Post tracking information shows that the tenant was provided a notice card on October 6, 2021 saying that the package was available for pick up – there have been no updates since that date.

I note that Canada Post, on their website, provides the following overview of what “registered mail” is, as follows:

“Registered Mail is a service we offer to those who need proof of mailing and/or proof of delivery. The service secures the signature of the addressee or the addressee’s representative and provides the sender with:

- A mailing receipt with the date of purchase
- A copy of the signature of the person who accepted the delivery
- Tracking and the date when we deliver the item”

As Canada Post indicates that the signature is obtained as confirmation of delivery, I find, on a balance of probabilities, that the tenant did receive the landlord’s initial package of evidence on August 14, 2021 as confirmed by the Canada Post tracking information.

I also find that while the tenant failed to pick up the landlord’s subsequent evidence package that was sent on October 5, 2021 the tenant received notice from Canada Post that it was available to him and as such, despite the tenant’s failure to pick up the package, I find that he has been sufficiently served with this evidence as well.

However, I also note that the evidence provided by the landlord on October 5, 2021 was primarily related to events that have occurred since the One Month Notice to End Tenancy for Cause was issued on July 6, 2021 and is of little relevance to whether or not the landlord had cause to end the tenancy when the Notice was issued.

Towards the end of the hearing and after each of the parties had made their submissions and in light of the tenant’s testimony, I determined that it would be unfair to proceed without the tenant reviewing the landlord’s video evidence. As such, I made the following orders:

1. The landlord will, no later than the end of business on November 18, 2021, provide the tenant’s advocate with a copy of the video evidence submitted to the Residential Tenancy Branch and served on the tenant as noted above on July 30, 2021
2. The tenant’s advocate will assist and ensure that the tenant has an opportunity to review the landlord’s video evidence.
3. The tenants advocate will, no later than the end of business Friday, November 26, 2021, coordinate any submissions or responses from the tenant in regard to their viewing of the landlord’s video evidence, upload the submissions/responses to the Residential Tenancy Branch (RTB) Dispute Management System (DMS) and email the same submissions/responses to the landlord at the email address provided by the landlord at the hearing; and
4. The landlord will upload to the RTB DMS and email to the tenant’s advocate any response to the tenant’s written submissions noted above no later than Monday, November 29, 2021.

The tenant's advocate submitted a document entitled J\_O\_Submission\_on\_video on November 26, 2021, that provides a response, as requested, to the viewing of the noted video, as ordered above. I note the landlord's agent submitted their response to the tenant's J\_O\_Submission\_on\_video document on November 29, 2021 as per the above orders. And finally, the tenant's advocate confirmed by email that they had received the landlord's November 29, 2021 response.

#### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to more time to apply to cancel a notice to end tenancy and to cancel a One Month Notice to End Tenancy for Cause, pursuant to Sections 47 and 66 of the *Act*.

It must also be decided if the landlord is entitled to an order of possession pursuant to Section 47 and 55 of the *Act*.

#### Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on April 30, 2021 for a month-to-month tenancy beginning on May 1, 2021 for a monthly rent of \$375.00 due on the 1<sup>st</sup> day of each month with a security deposit of \$187.50 paid.

Both parties submitted a copy of a One Month Notice to End Tenancy for Cause issued by the landlord on July 6, 2021 with an effective vacancy date of August 31, 2021 citing the tenant or a person permitted on the property by the tenant has seriously jeopardized the health and safety or lawful right of another occupant or the landlord.

Under the section of the Notice entitled "Details of Cause", the landlord wrote:

"On June 3<sup>rd</sup>, 2021 Joseph swung a large knife at another tenants guest in the hallway. He then cornered the guest and swung the knife at the guest in a threatening manner. Joseph's guest then came into the hall and pointed a can of bear mase at the guest in a threatening manner.

Engaging in violence at the building is a breach of a material term of tenancy in our addendum"

During the hearing the tenant testified that he could not remember the exact date he received the Notice to End Tenancy. However, on the Application for Dispute Resolution the date given as "Notice Delivery Date" the tenant entered July 10, 2021 and that it had been posted on the door. The landlord's Application stipulated that the "Notice Delivery Date" was July 6, 2021 and that it was served by posting on the door.

On his Application for Dispute Resolution and in his testimony at the hearing the tenant indicated that he had made several attempts to file his Application online but that the computer system kept logging him off and wouldn't accept his dispute. The tenant stated he could not specifically remember when he started trying to file his application. He also stated he did not attempt to contact the Residential Tenancy Branch for Assistance.

The tenant also testified that he sought assistance from the landlord to help him with his Application, but the landlord did not assist. The landlord testified that while they do have tenant support workers, they can assist with many issues but responsibility rests with their tenants to deal with their own legal matters.

The tenant testified that he also had difficulty in finding an advocate to assist him in his Application. The tenant's Application for Dispute Resolution was made on August 4, 2021. The tenant sought an order to allow for him to have more time to submit his Application for Dispute Resolution.

The landlord submitted that on June 3, 2021 the tenant pulled a knife on and threatened two guests of other residents of the residential property. In support of this assertion, the landlord submitted a video recording from their hall security camera. There is no audio recording of the encounter.

The video shows the guests walking by the tenant's rental unit; the tenant following the guests down the hall; the tenant drawing a knife; and continuing to follow the guests down the hall. After the tenant and the male guest went further down the hall the female guest was threatened with bear spray by the tenant's female guest.

The tenant testified that his unit had been broken into 2 or 3 times and that he had been told a number of other occupants had master keys to each rental unit. He testified that on the day of the video recording the guests "stormed past" him and made some a threat. He stated that he asked the guest if he had broken into the tenant's unit and that the guest then responded by showing him a gun from a side bag he was carrying. He testified that as a result he pulled his knife.

All three of the landlord's agents testified that they were not aware of any reports of any rental units on the residential property being broken into from the date of the opening of the property (May 1, 2021) to the date of this event on June 3, 2021.

In his written submission provided after the hearing the tenant's advocate wrote the following:

- The Tenant had provided evidence at the hearing that the guest in the hallway had disclosed a gun while the male guest was passing the Tenant in the hallway. The Tenant indicated that as the guest was showing him the gun, the guest said the phrase "Now what's up."

- The Tenant gave evidence that he drew his weapon in response to the guest showing him a gun.
- I submit that the relevant time period to determine if the guest had a gun would be at the 7 to 10 second time period of the video. This is the point where the guest passes the Tenant in the hallway.
- During this interval on the video, the individuals in the video are not clearly visible because of the distance from the camera and the lighting in the hallway.
- The Tenant has given evidence that it was at this point that the guest showed him a gun. I submit that video does not preclude this event and as such, the Tenant's evidence should be preferred.
- At the 17 second mark of the video, the guest's hands were visible. It appeared at this point that the guest was holding a key card.
- The Tenant agrees that the video shows the Tenant's female guest entering the hallway with a can of bear mace and approached the male and other female guest with it.
- It appears that the Tenant's female guest stands with the bear mace for a little over 1 minute before beginning to return from the direction she came in.
- At approximately the 2'41" mark, the Tenant and the male guest walk back towards the Tenant's unit together.
- During the entirety of the counter, the video does not show that the Tenant injures or otherwise makes contact with the male guest, until he puts his arm around the guest's back and they walk off together.

The landlord's agent's response to the written submission is that she stands by her original interpretation of the video footage that she described at the hearing. I note that the landlord's agent submitted in the hearing that the guest was only holding a card and there was no evidence of a gun in the video.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other things, the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Section 47(2) states that a notice under this section must end the tenancy effective on a date that is not earlier than one month after the date the notice is received, and the day before the day in the month, that rent is payable under the tenancy agreement.

Section 47(4) allows a tenant to dispute a notice under Section 47 by making an application for dispute resolution within 10 days after the date the tenant **receives** the notice.

Section 47(5) states that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

While the tenant indicated in the hearing that he had memory issues and that he cannot recall the exact date that he received the Notice to End Tenancy, I accept the statement on his Application for Dispute Resolution that it was received on July 10, 2021. I note that this would be only one day later than the provisions under Section 90 of the *Act* which stipulate that a document served by posting on the door would be deemed as received 3 days after posting.

As such, I find the tenant had until July 20, 2021 to submit an Application for Dispute Resolution seeking to cancel the 1 Month Notice. The tenants' Application was submitted on August 4, 2021, 25 days after receipt of the Notice. As a result, I find the tenant has failed to comply with the requirement to submit an Application for Dispute Resolution within the allowable 10 days under Section 47(4).

Section 66 stipulates that the director may extend a time limit established by the *Act* only in exceptional circumstances. However, the director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

Residential Tenancy Policy Guideline 36 states the word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

The guideline goes on to say the criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

In the case before me, the tenant has submitted that he has memory problems, however, he has provided no documentary evidence such as medical reports confirming any significant cognitive issues. In addition, the tenant provided no explanation as to why, when he was having difficulty completing an Application for Dispute Resolution, he did not attempt to contact the Residential Tenancy Branch.

I also note that the Dispute Management System – the system accessed by landlords and tenants to file their applications maintains “abandoned” applications within the system. After a review of the System there are no abandoned applications showing in the tenant’s name.

And finally, while the tenant submitted that he had difficulty in finding an advocate, again there is no evidence submitted confirming when he started looking for one or when and/or when he actually found one.

In relation to the request for an extension of time to submit his Application, I find the tenant has failed to provide evidence that he had a bona fide intention of applying prior to the deadline; that he took reasonable steps to have made the application within the allowable timeframes; or why August 4, 2021 was as soon as practical under the circumstances.

I also find, based on the lack of evidence to the contrary, that the tenant willfully failed to comply with the relevant time limit and that it was the tenant’s lack of due diligence that contributed to the failure to meet the time frame.

As such, I find the tenant has failed to establish any exceptional circumstances that would allow me to grant additional time to submit his Application. As a result, I find the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit, pursuant to Section 47(5) of the *Act*.

In the alternative, if I should have allowed an extension of time, I find, on a balance of probabilities, that the landlord has established cause to end the tenancy, pursuant to Section 47.

I am not persuaded by the tenant’s submissions that the guest presented a gun. I prefer the landlord’s interpretation of the videographic evidence. During the hearing the tenant stated that the guest had shown a gun from a “side bag”. In reviewing the video submitted, I note the guest had an over the shoulder bag only that was never touched by the guest during the encounter.

I also find that it was the tenant and his own female guest who were the aggressors at all material times. I find it was the tenant that initiated the encounter with the guests; that he followed them down the hall and that at all material times the guest was holding a credit or key type card in his hands.

As a result, I find the tenant and a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. I find the threat of physical harm with a knife and/or bear spray does constitute a serious jeopardy to another occupant's legal right. While I accept that the guests were not "another occupant" of the residential property they were guests of other occupants and therefore it was the legal right of access of guests for those other occupants that was seriously jeopardized.

As a result, I dismiss the tenant's Application for Dispute Resolution in its entirety, without leave to reapply. In addition, I find that since the landlord has established cause to end the tenancy pursuant to Section 47 of the *Act*, they are entitled to an order of possession pursuant to Section 55.

### Conclusion

I find the landlord is entitled to an order of possession effective **two days 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: December 1, 2021

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Residential Tenancy Branch