



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC MNDCT DRI AAT OLC FFT

### Introduction

The tenant applied to dispute a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 47(4) of the *Residential Tenancy Act* (“Act”). They also applied for relief under sections 30, 41, 42, 43, 65, 67, and 70 of the Act. Last, they applied to recover the cost of the filing fee under section 72 of the Act.

Both parties attended the hearing. No service issues were raised, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

### Preliminary Issue: Severing of Unrelated Matters

Rule 2.3 of the *Rules of Procedure* states that “Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.” In this file, it is my finding that all claims other than that related to disputing the Notice are unrelated and are accordingly dismissed, with leave to reapply. However, the claim for recovery of the filing fee will be considered.

### Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to recover the cost of the application 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.

The tenancy began on July 1, 2017. Monthly rent is \$974.00. The tenant paid a security deposit of \$475.00 and a pet damage deposit of \$100.00. There is a copy of the written tenancy agreement in evidence.

The Notice, a copy of which was in evidence, was served in-person on August 17, 2021. Page two of the Notice indicates that the reason it was issued is because

The landlord testified that they issued the Notice because the tenant has (1) significantly interfered with or unreasonably disturbed another occupant or the landlord, (2) seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and (3) put the landlord's property at significant risk.

The landlord (R.S.) testified that the primary issue is the tenant's dog, Stewie. Stewie is a white chihuahua. According to the landlord, Stewie has attacked a couple of people and has bitten other dogs. On one occasion, the dog managed to escape the fenced property, run across the street, and attack a neighbour's dog. The tenant ran after Stewie, but she tripped and was unable to stop the dog attack. After speaking to a lawyer, the landlord was informed that they as homeowners could be held liable for any injury claims arising from a dog attack.

Stewie has been in the rental unit for about four and a half years, though he has been getting increasingly aggressive more recently. He is a rescue dog and has never really taken a liking to male humans.

In addition to the incident wherein the dog ran across the street, the landlord testified that Stewie has "attacked kids in the backyard" and has "attacked lots of people." The landlord then clarified that by "attack" he means full on nipping and charging at people.

As a result of the increasingly aggressive behavior, the landlord imposed a change in the parameters regarding where and how the dog may be let loose in the backyard. On August 13, 2021, in an email from the landlord (O.M.) to the tenant, the tenant was informed that effective at midnight the dog was "no longer permitted to use the backyard." Only front yard use is permitted, and that the dog "will be required to be on a leash at all times while on the property, except while in your suite and car. Will not except [sic] him being off leash at any time."

The landlord testified that there is no other dog on the property at this time. They would like to get a dog, however, but not while Stewie is around. The landlord did, on one occasion, look after their daughter's dog, which lead to a canine altercation.

Last, the landlord testified that Stewie barks non-stop. Stewie nips and charges at him, and despite the landlord (R.S.) attempting to modify the dog's aggressive behavior through positive reinforcement in the form of dog treats, "I gave up on that."

Submitted into evidence by the landlord was an email statement (dated August 21, 2021), in which the landlord's friend (K.K.) writes, inter alia:

I'm a friend of the landlord and was invited to the house for a BBQ. The dog owner and Stewy [sic], and 2 other people were in the yard when Stewy attacked me and would not stop. The owner did not even get out of her lawn chair, she only yelled at him to stop. He scratched my leg and bit my hand. I kicked at him and yelled "what the hell!!!" He bit deep enough to bleed and needed to be cleaned and bandaged."

The tenant testified that Stewie was with her since before she moved in. He is a nervous dog around people. Over time, however, the dog has been fine. Stewie previously played with the landlord's dog Kerby, and that there were never any issues. Yes, the dog barks occasionally, the tenant acknowledged.

What apparently marked a change in the dog's behavior was a several-month-long marital battle involving the landlord's ex-husband. He would take out his aggression on the tenant and her dog, by calling her names and "screaming and pounding on the walls." The tenant had to take her dog to work or drop him off at her mother's house on several occasions so that the dog would not be left alone in the house with the ex. According to the tenant, this event resulted in her and the dog being traumatized, and that both her and Stewie have PTSD. The dog's behavior improved after the ex left.

The tenant testified that when the landlord O.M. is not around, the landlord's boyfriend (R.S.) is "bossy and aggressive" and Stewie does not like that. The dog can tell a good person from a bad person and will bark at those he does not like. He barks at R.S.

In respect of the altercation between her dog and the landlord's daughter's dog Theo, the tenant noted that on this occasion she was asked by R.S. to take Stewie around front, so that Stewie and the German Shepard Rottweiler cross did not cross paths. Unfortunately, the dogs crossed paths and a fight ensued at the bottom of the stairs.

Since then, the tenant has agreed to keep Stewie on a leash. Sadly, there is now no place to let the dog run or play, explained the tenant, and she has to take him to a dog park to meet his “multiple dog friends.” In response to a question I asked, the tenant acknowledged that Stewie nips, but he “does not bite.”

In rebuttal, both parties clarified comments made by each other on the day of the Stewie-Theo altercation. And the landlord added that Stewie will not stop “barking and barking and barking.”

### Analysis

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

In this dispute, the Notice was issued under [subsection 47\(1\)\(d\)](#) of the Act, which states that a landlord may end a tenancy if a tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk;

Here, we have the landlord testifying and arguing that the tenant’s dog attacks children, adults, and other animals. In addition, the tenant’s dog barks non-stop. Conversely, the tenant testified and argued that the dog does not bite people, only nips, and that he “barks occasionally.” However, the tenant did not dispute the landlord’s testimony about the dog running across the street and attacking another dog. Nor did the tenant dispute the landlord’s assertion that they would be held liable as homeowners should a lawsuit arise from Stewie’s potential attacks. And the tenant admitted that the dog nips.

In respect of the barking, while the landlord claims that it is continuous, there is no persuasive evidence before me to find that it is as non-stop as the landlord claims. When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord has simply not provided sufficient evidence of the bothersome barking.

As for the claim that the dog attacks animals, children, and adults, there is sufficient evidence – both the landlords’ own testimony of being attacked, and the letter of the landlord’s friend – for me to be persuaded that Stewie does indeed cause injury. Whether Stewie does not like certain people is immaterial: a tenant’s dog cannot be nipping, biting, or otherwise acting aggressively toward children, adults, and animals. In short, the evidence before me persuades me to find that the tenant’s dog has, and continues to, seriously jeopardize the health and safety of the landlord.

It is not lost on me that Stewie is a rescue dog with anxiety and a fear of many things. He appears to be, at least when in the company of certain people or his canine friends, a “quiet, friendly, calm natured dog” (as noted in a letter from a third party). However, that his behavior also manifests in aggressive charging, biting, and nipping, cannot be overlooked. I am sympathetic to the tenant’s plight, as I am with the landlord’s; both parties appear to be dog lovers. Yet, in order to ensure that no more adults, animals, or children are attacked, bitten, or nipped, the Notice to end the tenancy is the last resort.

Therefore, in taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving a ground under subsection 47(1)(d)(ii) of the Act.

The tenant’s application is therefore dismissed, and the Notice is upheld. Pursuant to section 55(1), having dismissed the tenant’s application to cancel the Notice, and having found that the Notice complies with section 52 of the Act in form and content, the landlord is granted an order of possession of the rental unit.

The tenant’s claim for recovery of the application filing fee under section 72 of the Act is dismissed, without leave to reapply.

### Conclusion

The tenant’s application is dismissed without leave to reapply.

The landlord is granted an order of possession, which must be served on the tenant and which is effective on January 9, 2022 at 1:00 PM. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision, which is final and binding except where otherwise permitted under the Act or the *Judicial Review Procedure Act*, is made on delegated authority under section 9.1(1) of the Act.

Dated: December 21, 2021

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Residential Tenancy Branch