



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNC

### **Introduction**

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to cancel a One Month Notice to End Tenancy for Cause.

The male Tenant stated that the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on October 06, 2021 was sent to the Landlord, via registered mail, although he cannot recall the date of service. The Property Manager acknowledged receiving these documents in a "timely manner" and the evidence was accepted as evidence for these proceedings.

On November 08, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Building Manager stated that this evidence was personally served to the male Tenant, although he does not recall the date of service. The male Tenant acknowledged receiving this evidence sometime in November and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

### Interim Decision

The male Tenant stated that he submitted two character references on September 18, 2021, one of which was a character reference from his local MLA. He stated that he served these documents to the Landlord on September 18, 2021, via registered mail.

The Property Manager acknowledged receiving these letters of reference.

The parties were advised that I was unable to locate those letters in the evidence submitted.

The Property Manager read out the letters during the hearing. The male Tenant agreed that content of the letters had been read accurately.

The parties were advised that I would consider those letters of reference, even though I did not have a physical copy of them.

### Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

### Background and Evidence

The Landlord and the Tenants agree that:

- this tenancy began in 2015;
- rent is due by the first day of each month;
- a One Month Notice to End Tenancy for Cause was personally served to the male Tenant on August 28, 2021;
- the One Month Notice to End Tenancy for Cause declared that the rental unit must be vacated by September 30, 2021;
- the One Month Notice to End Tenancy for Cause declares that the tenancy is ending because the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; and
- the Tenants are still living in the rental unit.

The Building Manager stated that the Landlord wishes to end this tenancy because of an incident between the male Tenant and the Witness with the initials "TC", which occurred on August 23, 2021.

The Witness with the initials "TC" stated that:

- he lives in the residential complex;
- on August 23, 2021 he observed the Tenant approaching the door to the residential complex;
- he was inside the building and was holding the door closed for "security reasons";
- the Tenant began pulling on the door in an attempt to enter;
- the Tenant managed to pull open the door;
- the Tenant managed to open the door and then dragged "TC" outside and began punching him;
- he did not punch the Tenant;
- another occupant of the residential complex intervened and separated him from the Tenant;
- the police attended and arrested the Tenant;
- he believes the police charged the Tenant;
- he was not arrested as a result of this incident; and
- the Tenant had previously assaulted him in 2020.

The Tenant stated that:

- on August 23, 2021 he attempted to enter the residential complex through the north door;
- the Witness with the initials "TC" was holding the door closed;
- "TC" was intoxicated;
- "TC" let the door open and "came out swinging";
- "TC" was holding a beer in his hand and he hit him with the hand that was holding the beer;
- he hit him back a "few times";
- he reported the incident to the police;
- the police arrested him but no charges were laid; and
- he broke his hand when he hit "TC".

The Witness with the initials "CN" stated that:

- she lives in the residential complex;

- on August 23, 2021 she observed the Tenant approach the residential complex;
- she observed the Witness with the initials “TC” pushing at the exit door in an attempt to exit the residential complex;
- she saw the door open and the two men scuffling and screaming;
- she saw the Tenant place “TC” in a headlock;
- she did not see either man swing at or punch the other; and
- the Tenant grabbed “TC” first.

The Landlord submitted a written incident report from “FJ”, who lived in the residential complex in August of 2021. In his report “FJ” declares that:

- on August 23, 2021 he was outside the residential complex when he heard “hollering”;
- the Tenant had “TC” in a headlock;
- he separated the Tenant and “TC”;
- he separated the Tenant and “TC”, at which point the Tenant fell against the wall and hurt his hand;
- he told the Tenant to leave and the Tenant complied; and
- he has witnessed “other times where” the Tenant “is violent” with “TC”.

In response to the written incident report from “FJ”, the Tenant stated that he did not fall or stumble, he did not injure his hand when he fell against the wall, and he has not been previously involved in an altercation with “TC”.

In his written incident report, the Witness with the initials “TC” provided a police file number for the incident that occurred on August 23, 2021 and for a previous incident with the Tenant in 2020.

### Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenants have a tenancy agreement which requires rent to be paid by the first day of each month.

Section 47(1)(d)(ii) of the *Residential Tenancy Act (Act)* permits a landlord to end a tenancy by giving notice to end the tenancy if 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.

On the basis of the undisputed evidence, I find that the Landlord personally served the

male Tenant with a One Month Notice to End Tenancy for Cause on August 28, 2021, which informed the Tenants of the Landlord's intent to end the tenancy pursuant to section 47(1)(d)(ii) of the *Act*.

On the basis of the testimony of the male Tenant and the Witness with the initials "TC", I find that on August 23, 2021 the male Tenant placed the Witness with the initials "TC" in a headlock and that he punched him more than once.

I find, on the balance of probabilities, that the male Tenant initiated the physical altercation on August 23, 2021. In reaching this conclusion I was influenced by the testimony of the Witness with the initials "CN". Although "CN" did not see either man hit the other, she was clear in her testimony that the Tenant was the first to make physical contact.

I favor the testimony of the Witness with the initials "TC", who stated that he did not hit the male Tenant over the male Tenant's testimony that "TC" "came out swinging" and that he hit him with the hand in which he was holding a beer. I found the testimony of "TC" to be forthright and believable, even when it reflected poorly on his behaviour. Conversely, I found some of the male Tenant's testimony to be self-serving and in direct conflict with evidence provided with other witnesses.

For example, the Tenant denied having a previous altercation with "TC", however in his written incident report "FJ" declared that he has previously observed the male Tenant being "violent" with "TC". In his written submission "TC" provides a police file number that corroborates his testimony that the Tenant had previously assaulted him in 2020.

On the basis of the testimony of "TC", the police file numbers provided by "TC" and the written declaration of "FJ", I find that there was a previous altercation between the male Tenant and "FC". As the male Tenant's testimony in regard to the previous altercation is wanting, I find that his overall credibility is damaged.

On the basis of the testimony of the male Tenant and the testimony of "TC", I find that this altercation was precipitated by "TC", who held the door of the residential complex closed when the male Tenant was attempting to enter. I find, however, that the physical altercation could have been avoided if the male Tenant simply waited for "TC" to leave the area or if he accessed the complex through a different door. Instead, he initiated a physical altercation with another occupant of the residential complex, which was an entirely inappropriate response to the incident.

On the basis of the male Tenant's testimony that he broke his hand when he hit "TC", I find that he struck him with considerable force. I therefore find that the Tenant seriously jeopardized the health and safety of "TC", who is an occupant of the residential complex. As such, I find that the Landlord has grounds to end this tenancy pursuant to section 47(1)(d)(ii) of the *Act*, and I dismiss the Tenants' application to set aside the One Month Notice to End Tenancy for Cause.

Although in the written incident report "FJ" stated that the male Tenant broke his hand when he fell against a wall, I find the male Tenant is more likely to know how/when his hand was broken. I therefore accept the male Tenant's testimony that he broke his hand when he hit "TC", as I can think of no reason why he would provide false testimony in that regard.

I specifically note that "TC"'s decision to hold the door closed on August 23, 2021 was also inappropriate. Whether the Landlord also has the right to end "TC"'s tenancy as a result of that behaviour is not, however, a matter to be determined at these proceedings.

I have considered the character references read out at the hearing and find they have little relevance to this decision. These references do not establish that the male Tenant did not behave inappropriately on August 23, 2021.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 of the *Act*, and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I am satisfied that the One Month Notice to End Tenancy for Cause complies with section 52 of the *Act* and I have dismissed the application to set aside the One Month Notice to End Tenancy for Cause. I must grant the Landlord an Order of Possession. I therefore grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

### Conclusion

I grant the Landlord an Order of Possession that is effective on **at 1:00 p.m. on**

**January 31, 2022.** This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and 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: January 17, 2022

---

Residential Tenancy Branch