



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNC, OLC, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the Tenant applied for:

- an order to cancel a 10 Day Notice to End Tenancy;
- an order to cancel a One Month Notice to End Tenancy, dated December 10, 2021 (the One Month Notice);
- an order for the Landlord to comply with the Act, regulation, and/or tenancy agreement; and
- the filing fee.

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenant testified they served their Notice of Dispute Resolution Proceeding (NDRP) on the Landlord by posting it to the door on November 26, 2021. The Landlord confirmed receipt of the NDRP. I note that posting to a party's door is not an accepted method of serving an application for dispute resolution under section 89 of the Act. I find the Landlord sufficiently served with the NDRP on November 26, 2021, pursuant to section 71 of the Act. The Tenant submitted a photo as late evidence to the Residential Tenancy Branch (RTB) on December 24, 2021, and testified they served the late evidence on the Landlord by email on December 24, 2021. As the Landlord confirmed they received the late evidence and had a chance to review it, I informed the parties I would accept it. I find the Tenant served their late evidence on the Landlord in accordance with section 89 of the Act.

The Landlord testified they served their responsive evidence on the Tenant by emailing it, and by taping it to the door, both on December 20, 2021. I find the Landlord served their responsive evidence on the Tenant in accordance with section 89 of the Act.

### Preliminary Matters

#### *Jurisdiction*

As the rental address indicated in the application is the same as the Landlord's address, I asked the Landlord about the layout of the dwelling so as to determine whether or not the RTB had jurisdiction to hear the application. Section 4(c) of the Act indicates that the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of the accommodation. As the Landlord indicated the Tenant had a separate two-bedroom suite in the basement of the dwelling, with their own kitchen and bathroom, I proceeded with the hearing.

#### *Application Amendment*

As the parties agreed that no 10 Day Notice to End Tenancy was served on the Tenant, and the Tenant indicated they had applied to cancel a 10 Day Notice in error, I amend the Tenant's application to remove the application for an order to cancel a 10 Day Notice to End Tenancy, in accordance with section 64(3)(c) of the Act.

#### *Related Issues*

The RTB's Rules of Procedure 2.3 states:

**2.3 Related issues** 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.

As it is not related to the central issue of whether the tenancy will continue, I dismissed the Tenants' application for an order for the Landlord to comply with the Act, the regulation, or the tenancy agreement.

### Issues to be Decided

- 1) Is the Tenant entitled to an order cancelling the One Month Notice?
- 2) Is the Tenant entitled to the filing fee?

### Background and Evidence

The parties agreed on the following particulars of the tenancy. There is no written tenancy agreement; in June 2021, the Tenant moved from a one-bedroom unit in the dwelling to a 2-bedroom unit; rent is \$1,150.00 a month, due on the first of the month; and the Tenant paid a security deposit of \$475.00, which the Landlord still holds.

The Landlord testified they served the One Month Notice on the Tenant in person on November 10, 2021. The Tenant testified they received the Notice as described. A copy of the One Month Notice was submitted as evidence.

The One Month Notice is signed and dated by the Landlord, gives an address for the rental unit, states an 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:
  - significantly interfered with or unreasonably disturbed another occupant or the Landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; and
  - put the Landlord's property at significant risk; and

The Details of the Event(s) section refers to an event on November 8, 2021, in which the Tenant allegedly left a pan unattended on the stove, resulting in smoke, which "smelled very toxic," accumulating in the Tenant's unit and in the stairwell up to the Landlord's living area. The Details section does not reference any other issues.

The One Month Notice, served on the Tenant on November 10, 2021, indicates it was signed on December 10, 2021, and gives an effective date of December 10, 2021. The Landlord testified this was done in error, and that they signed the Notice on November 10, 2021.

The Landlord testified that on November 8, 2021, and about 11:00 p.m., they noticed a chemical smell in their living space. They opened the door to the stairs leading to the basement units, and found that the stairwell was full of smoke. The Landlord thought

one of the units was on fire, and pounded on the two tenant's doors. The Landlord testified that after five minutes, the Tenant answered their door; they had been in the bathroom, and had not been aware that smoke was accumulating in their unit. The Landlord testified that when the Tenant opened their door, the smoke was very thick in the unit and smelled of chemicals. The Tenant had left a lidded pan on the stove with the element on. The Landlord testified that the pot could have burst, starting a fire in the unit. The Landlord testified the smell lingered in the house for over a week.

The Landlord testified that the Tenant resisted the Landlord's efforts to get a smoke damage assessment done. The Landlord testified they tried four times to make the arrangements by texting the Tenant, but that the Tenant said the proposed dates and times would not work. The Landlord submitted as evidence a screenshot the Landlord has labelled as from November 10, in which the Landlord writes that the assessor will arrive at 4:00 p.m. on Friday. The next text indicates the appointment will be at 5:00 instead. The reply, ostensibly from the Tenant, indicates that the time won't work. The Landlord has written on the image: "[The Tenant] said no to [the] appointment 3 times and I was forced to cancel."

The Landlord testified they were not aware that the smoke alarm in the Tenant's unit was not working. The Landlord testified that it may have been tampered with by the previous tenant in the unit, whom the Landlord "had trouble with."

The Landlord testified they tried to get a fully monitored smoke alarm installed in the Tenant's unit, but the Tenant was not cooperative about providing access. The Landlord testified that as both they and the Tenant work during the week, the Landlord had texted the Tenant that the work would be done on the weekend, but the Tenant did not consent to that weekend or the following weekend. The Landlord submitted a screenshot of another set of texts with the Tenant, undated, in which the Landlord writes: "Home security will be here Saturday afternoon to install fire alarm." The Tenant's reply includes: "I am contacting the fire marshal tomorrow I do not feel comfortable that you are contacting subs ... I do not provide authorization for your contractors." The Landlord's reply includes: "It's not subs it's [company name] home security." The Landlord has written on the image: "[The Tenant] did no [sic] say yes to appointment on November 13th, therefore I re-scheduled to November 20th."

The Landlord testified that they then gave up trying to schedule the appointments.

The Landlord also provided testimony and documentary evidence regarding two alleged assaults by the Tenant. The Landlord testified that on November 10, 2021, when they

went to talk with the Tenant about the smoke, the smell, and getting the smoke damage assessment done, the Tenant said they would not be home on the proposed date and time. The Landlord testified the Tenant refused to leave their keys so that the Landlord could provide the worker access to the Tenant's unit. The Landlord testified the Tenant became hostile, and demanded written notice. The Landlord testified that at the end of the exchange, the Tenant put their hands on the Landlord's chest and pushed the Landlord out the Tenant's unit. The Landlord testified their chest hurt for a week.

The Landlord testified that later that day, they returned to the Tenant's unit with their child to witness the Landlord serving the One Month Notice on the Tenant. The Landlord submitted documentary evidence indicating that as they had prepared the Notice earlier in the day, it "did not include the physical assault that happened earlier."

The Landlord testified that the Tenant physically assaulted them again when the Landlord was serving the One Month Notice. The Landlord testified the Tenant gripped the Landlord's upper arms and pushed the Landlord out the door. The Landlord testified that their arms were sore for over a week, and that the Tenant called the police following the altercation, who attended and spoke with both parties.

The Tenant testified that they had been cooking a meal in a silicone pot graded for up to 500 degrees Fahrenheit, put the lid on, went into the bathroom, then forgot about the pot on the stove. Smoke accumulated, and the smoke alarm was not working. The Tenant testified that once alerted to the smoke, they turned on fans in their unit, and stepped outside. The Tenant pointed out that on the One Month Notice, the Landlord had written: "There was no fire." The Tenant questioned: as there was no fire, and the Landlord had not called the fire department, how is it the Tenant put their safety at risk?

Regarding the smoke damage assessment, the Tenant submitted as evidence a photo of the stove top they said was taken on November 28, 2021, which shows no damage. The Tenant testified that the smoke damage assessment appointments were proposed during work hours and on short notice. The Tenant testified that they and the Landlord had agreed to a time, but the Landlord had changed the appointment time from 4:00 p.m. to 5:00 p.m. on a Friday, and the assessor did not show up.

Regarding the installation of the smoke detector, the Tenant testified that a worker was to come that same weekend on Saturday, but they did not show up. The Tenant testified that their neighbour said the Landlord had cancelled the appointment and rescheduled it for the following Saturday.

The Tenant testified that a worker arrived the following Saturday to install the smoke detector, but as the Tenant had not been informed by the Landlord in writing about the appointment, the Tenant was not home. When I asked if the Landlord had informed the Tenant of the appointment by text, the Tenant testified that they do not look at or respond to the Landlord's texts as the Landlord is too confrontational. The Tenant indicated they wished to communicate with the Landlord in writing, not by text message. The Tenant also testified that the Landlord "has done this too many times," that being arranging for people to come to do work on the Tenant's unit, but they don't show up. The Tenant testified that they have a very long commute, and only have Saturdays in which to deal with their financial matters.

Regarding the assault allegations, the Tenant indicated that both had occurred after the Landlord had forced their way into the Tenant's unit without the Tenant's consent.

The Tenant testified that when they declined to give the Landlord their keys, the Landlord had then attempted to take the Tenant's keys off the kitchen table. The Tenant testified that it was at that point they forced the Landlord out of their unit.

The Landlord testified they did not attempt to take the Tenant's keys.

The Tenant testified that after the second altercation, the police attended but no charges were laid.

The Landlord testified that when asked by the police, they had declined to press charges against the Tenant.

### Analysis

Based on the parties' testimony, I find the Landlord served the Tenant the One Month Notice on November 10, 2021, in accordance with section 88 of the Act, and the Tenant received it on the same day.

I find the One Month Notice meets the form and content requirements of section 52 of the Act, despite the following faults: it does not specify unit information, it has an incorrect signed date of December 10, 2021, and an incorrect effective date of December 10, 2021. I accept the Landlord's testimony that the incorrect dates were an error, and that they signed the Notice on November 10, 2021.

Despite the missing unit information in the address section of the One Month Notice, as the Tenant's name appears on the One Month Notice, and the Tenant raised no questions in the hearing regarding the unit the Notice pertained to, in accordance with section 68 of the Act, I am satisfied that the Tenant understood that the One Month Notice referred to their rental unit.

Regarding the One Month Notice's incorrect effective date of December 10, 2021, Section 53 of the Act states that incorrect effective dates are automatically changed. As the Landlord testified they signed the Notice on November 10, 2021, the correct effective date of the One Month Notice is December 31, 2021.

Section 47 of the Act states that a tenant receiving a One Month Notice may dispute it within 10 days after the date the tenant receives the Notice. As the Tenant received the Notice on November 10, 2021 and applied to dispute the Notice on November 19, 2021, I find the Tenant met the 10-day deadline.

Section 47 of the Act states that a landlord may end a tenancy if a tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the Landlord;
- seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; or
- put the Landlord's property at significant risk.

I accept the Landlord's and Tenant's testimony that the Tenant left a pan unattended on the stove with the element on. I accept the Landlord's testimony that this action produced enough smoke to fill the stairwell up to the Landlord's unit, and that when the Tenant opened their door, the Tenant's unit was filled with thick smoke. I accept the testimony of the Landlord and Tenant that the Tenant had not been aware the smoke had been accumulating.

Due to the hazards resulting from the Tenant's actions, including those related to exposure to excessive smoke and the risk of fire, I find the Tenant seriously jeopardized the health or safety or lawful right of another occupant or the Landlord, and put the Landlord's property at significant risk.

In accordance with section 47 of the Act, I find the Landlord is entitled to an order of possession.

The Landlord and Tenant should be aware that section 29 of the Act allows a landlord to access a rental unit as follows:

**Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

As the tenancy is ending, I find it is not necessary for me to consider the assault allegations.



Conclusion

The Tenant's application is dismissed; the One Month Notice is upheld.

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession must be served on the Tenant. The order of possession 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: January 04, 2022

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Residential Tenancy Branch