



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, RP

### Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on October 7, 2021 to dispute a One Month Notice to End Tenancy for cause (the “One-Month Notice”), and for repairs to the rental unit. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 18, 2022. Both the Landlord and the Tenant attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

At the outset of the hearing, each party confirmed they received the prepared documentary evidence of the other in advance of the hearing date. On this basis, I proceeded with the hearing as scheduled.

### Preliminary Matter

At the outset, I advised both parties of the immediate issue concerning the One Month Notice. The *Residential Tenancy Branch Rules of Procedure* permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes ‘related issues’, and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: “. . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hearing other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.”

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. Rule 6.2, I do not consider the issue concerning repairs listed above. By Rule 2.3, I find this issue is unrelated and I amend the Tenant’s Application to exclude that matter. The

Tenant has leave to reapply on that ground. This means they may file a new and separate application to address that issue.

### Issues to be Decided

Is the Tenant entitled to a cancellation of the One-Month Notice?

If the Tenant is unsuccessful in their Application, is the Landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

### Background and Evidence

The Landlord provided a written submission in which they described the rental unit set-up: there is an upper unit with a separate Tenant. The lower unit is occupied by the Tenant here. Each unit has a separate storage shed.

Both parties submitted a copy of the One-Month Notice. This is signed and dated September 27, 2021 for the move-out date of October 1, 2021. The Landlord indicated that they served the Tenant in person; the Tenant confirmed this in the hearing. In a written submission, the Landlord acknowledged the error on the move-out date, and stated the intention was to indicate November 1, 2021 on the document.

The One-Month Notice gives the following reasons for service of this document:

- ☐ Tenant has allowed an unreasonable number of occupants in the unit . . .
- ☐ 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
  - put the landlord's property at significant risk.
- ☐ Tenant or a person permitted on the property has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- ☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- Tenant has assigned or sublet the rental unit/site/property/park without the landlord's written consent.

The Landlord provided details in the required space on the document. This listed notifications by the municipality for unsightly property. The Tenant promised to address the concerns by August 30, and again by September 17 and September 24, yet did not do so.

In the hearing, the Landlord clarified that this is the "illegal activity" indicated on the One-Month Notice. The Landlord provided 12 photos showing the state of things on the property on September 2, 2021. These show the recreational vehicle parked on the property, a truck in a state of disassembly, and miscellaneous items in various spots on the property.

In their written account, the Landlord set out that they received three separate notices from the municipality about bylaw violations. These letters in their evidence are dated October 19, 2020, August 16, 2021, and October 5, 2021. The Landlord visited on September 2 to ensure the Tenant was cleaning up the property; however, they saw no improvement, with the Tenant away at that time. The Tenant advised via text to the Landlord they were seeking to move out as soon as possible.

The Landlord visited again on September 8 to find the situation unresolved. The Tenant agreed to remove personal belongings, rubbish, automotive parts, an uninsured vehicle, temporary tarp structures on the property and in the shared shed area. The date of September 17 was stated by the Tenant at that time. During this visit the Landlord became aware of the extra person living in the recreational vehicle on the property. The Landlord also advised the Tenant about operation of noisy power tools past 8pm.

In their follow-up, the Tenant advised the Landlord on September 18 that they had not finished the required clean-up. The Landlord extended the date to September 24, with the Landlord advising they would issue a notice to end tenancy if there was no progress. On this date the Landlord learned from the other resident on their property that the Tenant here was operating power tools at inappropriate times.

On September 27, the Landlord visited again, to find the work incomplete. Additionally, a "makeshift greenhouse" was constructed on the property. The Landlord visited the following day and issued the One-Month Notice at that time.

In their evidence, the Landlord submitted photos showing the state of the rental unit on September 2, 2021. They also submitted photos from the property dated September 27, 2021. One photo shows a sewage line running from the recreational vehicle parked on the property.

The Landlord provided the initial letter from the municipality advising of the recreational vehicle illegally stored on the city street, in a residential area. This is not allowed for longer than twenty-four hours.

The Landlord included a copy of the municipality August 16, 2021 letter that described “an accumulation of discarded materials, an uninsured/non-mobile truck and tarps littering [the] property”, contrary to the bylaw. This letter gave the final date of August 30, 2021 for removal of the items, and either the proper insurance or removal of the uninsured vehicle from the property.

The Landlord provided the next letter from the municipality advising of the recreational vehicle occupied in excess of seven continuous days. This set the final date of October 18 to cease occupying the recreational vehicle.

The Tenant in their written response clarified that they initially met the bylaw officer when that officer visited on August 6, 2021. The Landlord text-messed the Tenant on August 23 checking on the progress of said clean-up, and the Tenant replied they were working on it. The Tenant never promised to have it completed by a certain date. On their own they contacted the municipality, and the municipality advised the Tenant “to get it done as soon as possible.”

The Tenant submitted that they complied with the bylaw violation on August 24. They advised the Landlord when they returned from their early-September trip that their friend was still working on the problem, as shown in the messages reproduced by the Tenant in their evidence. On September 7 the Tenant advised “I’m sorry it took a bit longer but now it’s dealt with.”

The Tenant also took issue with being advised about a specific parking area on the property at that time, not having known about it previously. They had to use this area in order to complete the required clean-up on the property, even though “I am entitled to a parking spot as per the rental agreement and my vehicle had been parked in that spot for the majority of my ownership of it . . .”

The Tenant also stated they were never advised to stop allowing occupancy of the recreational vehicle on the property. It was never “in excess of 7 continuous days” as stated in the local

municipality bylaw. In reality, the guest was occasionally spending one or two nights in that recreational vehicle, with the max being 6 days in a row.

### Analysis

The *Act* s. 47 is the provision that deals with a tenant significantly interfering with or unreasonably disturbing another occupant or the landlord. There is the additional provision of illegal activity that has or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.

In this hearing, the onus is on the Landlord to prove they have cause to end the tenancy. The Landlord spoke to these reasons in the hearing. Their evidence included photos and communication from the municipality about bylaw violations.

I find the Landlord has provided sufficient evidence to show the Tenant's actions in not keeping the property orderly constitute interference and unreasonable disturbance. As well, the three letters from the municipality in the timespan of one year show these actions were adversely affecting the lawful rights of the Landlord. Simply put, the Tenant is the source of ongoing bylaw violations, and their lack of attentiveness to rectifying the issues is unreasonably disturbing the Landlord here.

I find the issue was ongoing, and despite reminders and queries from the Landlord, the Tenant did not comply with the requests for cleanup. I find the evidence of the Landlord was clear that they had discussed the issue with the Tenant and made clear the need for cleanup on the property. Other issues began to enter, such as use of power tools disturbing the other property occupant, and the questionable use of the recreational vehicle by the Tenant's guest on the property. The Tenant did not present extenuating circumstances that were present that blocked them from completing the tasks of cleanup. There was certainly no acknowledgement of completion of the tasks in the time given by the Landlord repeatedly. For these reasons, I find the Landlord was justified in issuing the One-Month Notice.

Given my findings on two reasons for the landlord issuing the One-Month Notice, I find there is no further need for examination of the other issues the landlord raised. Sufficient grounds for the landlord ending the tenancy are in place. The Tenant's Application for cancellation of the One-Month Notice is dismissed without leave to reapply.

The *Act* s. 55(1) states that if a tenant applies to dispute the landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld, the

landlord must be granted an order of possession if the document complies with all the requirements of s. 52 of the *Act*. On my review, the One-Month Notice here contains all the required elements set out in s. 52. Both the Landlord and Tenant acknowledged the effective date to be November 1, 2021.

By this provision, I find the Landlord is entitled to an Order of Possession and the tenancy shall end. The Tenant clearly stated in the hearing they were seeking to move out from the rental unit and seek living arrangements elsewhere. In line with this, I have set the final end-of-tenancy date on March 31, 2022, at 1:00pm. The Tenant must still pay rent for the final month of this tenancy.

### Conclusion

For the reasons above, I grant an Order of Possession to the Landlord effective 1:00 p.m. on March 31, 2022. The Landlord must service this Order of Possession on the Tenant. Should the Tenant fail to comply with this Order, this Order 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 s. 9.1(1) of the *Act*.

Dated: February 22, 2022

---

Residential Tenancy Branch