



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **FINAL DECISION**

Dispute Codes      Landlord: OPC, FFL  
Tenant: CNC, FFT

### Introduction

This was a cross application hearing that convened on September 27, 2021, February 7, 2022, March 10, 2022, March 17, 2022 and March 25, 2022. This Final Decision should be read in conjunction with the First Interim Decision, the Second Interim Decision the Third Interim Decision and the Fourth Interim Decision. Total hearing time for all five hearings was nine hours and 40 minutes.

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy, pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Cause pursuant to sections 47 and 55; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant and the tenant's advocate attended the March 25, 2022, hearing. Landlord counsel G.M., the landlord's property manager, landlord witness M.J. ("resident building manager M.J."), and landlord witness M.J. (the "resident building manger M.J.") attended the March 25, 2022, hearing. The tenant, the tenant's advocate, the property manager and resident building manager M.J. provided affirmed testimony. Landlord counsel G.M. provided submissions on behalf of the landlord.

I note that in the second hearing the tenant's witness S.G. called in the at the beginning of the hearing. Pursuant to Residential Tenancy Branch Rule of Procedure 7.20, I asked S.G. to disconnect from the hearing until he was called as a witness by the tenant. The tenant and the tenant's advocate did not call S.G. to testify in the second hearing or any hearing thereafter and did not request additional time for S.G.'s testimony to be heard.

Throughout the course of the five hearings, the tenant, the tenant's advocate and counsel for the landlord were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties confirmed that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

#### Preliminary Issue

At the start of the February 7, 2022 hearing, I asked the tenant's advocate if the tenant had any objection to the landlord's application for dispute resolution being heard on its merits. The advocate submitted that the landlord's application for dispute resolution is not res judicata and that the tenant did not dispute the landlord's application for dispute resolution being heard on its merits.

Part way through the March 10, 2022 hearing, which lasted 2.5 hours, the advocate testified that in the February 7, 2022 hearing she was distracted when she testified that the tenant did not object to the landlord's application being heard on its merits.

The advocate submitted that incidents that occurred between February 18, 2021 and May 18, 2021 should not be considered in determining if the landlord is entitled to an Order of Possession for Cause. The following agreed factual matrix is required to understand the above submission.

Some years ago L.R. signed a tenancy agreement with the landlord for the subject rental property. At some point the tenant moved in with L.R. L.R. later moved out of the subject rental property and moved into another apartment in the subject rental building.

The tenant remained in the subject rental property; however, no new tenancy agreement with the landlord was signed.

The landlord served L.R. with a One Month Notice to End Tenancy for Cause (the “February Notice”), for the subject rental property, tenanted by the tenant on or around February 18, 2019. The February Notice sought to evict the tenant from the subject rental property, it did not seek to evict L.R. from the apartment she rents. L.R. was served with the February Notice because, at that time, the landlord considered the tenant an illegal sub-tenant of L.R.

L.R. applied to cancel the February Notice and a hearing with the Residential Tenancy Branch occurred on May 18, 2021 and resulted in a Decision dated May 20, 2021. In the May 20, 2021 Decision, an arbitrator found that the tenant was a tenant and not a sub-tenant of the subject rental property, pursuant to a previous Residential Tenancy Branch Decision dated October 25, 2019. The arbitrator therefore cancelled the February Notice because it did not name the tenant and was not served on the tenant.

Counsel for the landlord submitted that following the May 18, 2021 hearing, the landlord posted another One Month Notice to End Tenancy for Cause (the “May Notice”) on the tenant’s door on May 19, 2021. The advocate confirmed the tenant’s receipt of the May Notice on May 19, 2021. Both parties agree that the May Notice correctly states the tenant’s name and the address of the subject rental property.

The May Notice, dated May 18, 2021, was entered into evidence and states the following reasons for ending the tenancy:

- 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 by the tenant has engaged in illegal activity that has, or is likely to:
  - damage the landlord’s property;
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord;
  - Jeopardize a lawful right or interest of another occupant or the landlord.

The Details of Causes section of the May Notice states:

The de facto tenant of [the subject rental property] [tenant] is responsible for his guests' actions. On Jan 29, 2021 an incident involving CA occurred which resulted in a One Month's Notice to End Tenancy for Cause posted on February 18, 2021. This Notice to End Tenancy was served to [L.R.], who pays the rent for [the subject rental property] but does not live there. L.R. applied for Dispute Resolution and on May 18, 2021 it was determined by the Arbitrator that the Notice to End Tenancy must be used in [the tenant's] name and therefore the incident and issues would need to be heard at a future date. This is a continuation of the process to End the Tenancy for [the subject rental property]. On Jan 29, 2021, [the tenant's] guest's actions resulted in a trespasser gaining unauthorized access to the building which endangered the safety, security, and the lawful rights of the tenants. Tenant's personal property was stolen by the trespasser/thief, and the landlord's property was put at significant risk by [the tenant's] guest and the trespasser/thief who attempted unauthorized access to different areas of the building. This is not an isolated incident; there is a history of issues with [the tenant's] conduct and behaviour.

The tenant's advocate submitted that because the landlord stated in the May Notice that this application is a "continuation of the process to End the Tenancy" that was initiated with the February Notice, any events that took place after the February Notice was served should not be considered. The tenant's advocate submitted that since this application is a continuation of the February Notice, only the events that lead to the service of the February Notice should be considered.

Counsel G.M. submitted that the use of the word "continuation" was used in the colloquial sense but does not join the legal proceedings. Counsel G.M. submitted that there are no legal authorities which prevent other issues from forming the basis of a future notice to end tenancy for cause.

I find that while the factual matrix of both this cross application for dispute resolution and the factual matrix that led to the May 18, 2021 hearing are intertwined, the disputes are separate and distinct as the parties are not the same. I find that the tenant's advocate has provided no legal authority that would restrict the landlord from taking into consideration all events leading up to the issuance of the May Notice. I find that the landlord's application for dispute resolution will be heard on its merits and all events leading up to the service of the May Notice will be considered.

### Issues

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. Is the landlord entitled to an Order of Possession for Cause pursuant to sections 47 and 55 of the *Act*?
4. Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agree that monthly rent in the amount of \$1,435.00 is payable on the first day of each month.

Counsel V.R. submitted that the May Notice was served on the tenant because:

- the tenant's guest, after being granted entry to the subject rental building by the tenant, stole mail packages from the lobby,
- the tenant smokes in the subject rental property contrary to the tenancy agreement,
- the tenant's guests disturb other tenants of the subject rental building, and
- the tenant has hazardous materials stored in the subject rental property and the subject rental property is a fire hazard.

Counsel V.R. submitted that on January 28, 2021 a number of parcels were delivered to the subject rental building and left in front of the mailboxes in the lobby of the subject rental building. Counsel V.R. submitted that on February 2, 2021 the landlord was advised via email, by a different resident of the subject rental building, that the above parcels were stolen. The notifying email was entered into evidence. Counsel submitted that another tenant of the subject rental building reported the theft to the police and that

the landlord provided the police with the video surveillance of the theft. Emails detailing the above were entered into evidence.

The landlord entered into evidence a series of video stills from the security cameras. The stills are time and date stamped January 29, 2021 1:30:48 a.m. to 6:31:47 a.m. I note that there is a gap in the stills from 2:08:21 to 6:06:37 a.m. Resident building manager P.J. testified that no stills were provided between 2:08:21 to 6:06:37 a.m. because no person was seen by the security videos in that timeframe. 110 stills were entered into evidence and when looked at in sequence, create a clear picture of the movements of those persons captured in the frames.

Resident building manager P.J. provided affirmed testimony via a narration of the events that can be seen in the video stills. Resident building manager P.J. provided the following summarized testimony regarding the stills:

- At 1:27 a.m. the tenant's guest, J.B., buzzes the tenant through the building intercom. The intercom system records which unit allows guests into the subject rental building. The landlord entered into evidence the transaction report showing that the tenant let J.B. in at 1:27 a.m. on January 29, 2021.
- At 1:30:48 a.m. the security camera catches a still of J.B.'s face.
- At 1:31:08 a.m. J.B. enters the subject rental building.
- Between 1:31:12 and 1:31:32 a.m. J.B. walks past the mailboxes and packages delivered in front of the mailboxes and proceeds to use the elevator to gain access to the fourth floor and the tenant's apartment. J.B. is pulling a dolly with a large box on it.
- At 2:05:27 a.m. J.B. returns to the lobby with the dolly and box.
- Between 2:06:04 a.m. and 2:06:31 a.m. J.B. leaves the dolly by the front door and carries the box to the back loading bay doors.
- Between 2:06:50 a.m. and 2:06:59 J.B. carries the box through the loading bay doors and wedges the door open.
- Between 2:08:03 a.m. and 2:08:14 J.B. carries the large box down the ½ flight of stairs leading to the loading area and hides the box under the stairs. J.B. then leaves.
- Between 6:31:45 a.m. and 6:32:06 a.m., an individual returns to the loading bay and looks in the box previously hidden underneath the stairs.
- Between 6:33:04 a.m. and 6:33:48 a.m., the individual looks through the previously propped open door and then leaves the way he came, through the loading bay.

- Between 6:37:11 a.m. and 6:38:17 the individual returns and walks through the propped open door and heads directly to the lobby and starts rifling through packages delivered in front of the mailboxes. The individual then takes all the packages and walks out the front door.
- At 6:52:59 a.m. the individual returns to the loading bay and enters the building through the propped open loading door.
- Between 6:53:01 a.m. and 6:56:22 a.m. the individual attempts to gain access to another floor via the elevator, but as he was not buzzed in, cannot gain access to other floors. The individual then goes down another hallway and then returns to the lobby.
- At 6:56:26 a.m. the individual starts rifling through the unclaimed mail next to the mailboxes.
- At 6:57:02 the individual goes to the front door and takes the dolly previously left behind by J.B. and leaves the rental building.
- At 7:09:38 a.m. another resident of the subject rental building sees the loading bay door is propped open and closes it. The resident informed the landlord of his finding.

Resident building manager P.J. testified that the landlord believes that J.B. is the same individual who stole the packages based on:

- Similar build of the guest and the individual
- The individual knew precisely where the guest left the box under the stairs, the location of the propped open door and dolly
- The police informed him that they were likely the same person.

The advocate submitted that J.B. and the thief are two entirely different people.

The tenant testified that the guest seen entering the subject rental building at 1:30 a.m. in the above stills was his guest "J.B.". The tenant testified that he is an artist whose primary medium is recycled goods. The tenant testified that J.B. is a homeless person who collects recycled materials and delivers them to the tenant for his art. The tenant testified that he pays J.B. for the recycled goods he collects.

The landlord entered into evidence an email from a police officer to resident building manager P.J. dated March 11, 2021, which states:

Yes, we spoke to [the tenant] on March 4<sup>th</sup> regarding the recent incidents at the building. [The tenant] said he was friends with one of the suspects but was not

aware of, or responsible for, the actions of his guests between the front door and his suite. [The tenant] stated that he would meet his associates outside instead of indoors going forwards.

Resident building manager M.J. testified that the theft was immediately reported to the police and she does not know why the police did not speak to the tenant about the theft until March 4, 2021.

The tenant testified that after he spoke to the police officer on March 4, 2021, he stopped allowing J.B. into the subject rental building. The tenant testified that when the police attended at the subject rental property on March 4, 2021 they informed him that J.B. was being investigated for mail theft. The tenant testified that he confirmed for the police the name of the person suspected of the January 29, 2021 theft. The tenant testified that he is not responsible for J.B.'s actions once J.B. left his suite.

The tenant testified that on January 29, 2021 J.B. used the dolly seen in the video stills to transport the recycled goods, which are in the box seen on the dolly. The tenant testified that he already has several dollies in his unit and did not want to keep another dolly. The tenant testified that he told J.B. to leave the dolly in the lobby of the subject rental building as a gift to the building or another tenant of the building.

The tenant testified that the person seen leaving the subject rental property at approximately 2:05 a.m. in the January 29, 2021 video stills is his guest, J.B. The tenant testified that J.B. exited through the loading bay doors and left the box under the stairs for a homeless person to sleep in. The tenant testified that homeless people sleep under the stairs all the time. Resident building manager M.J. testified that homeless people do not frequently sleep under the loading bay stairs and that a homeless person had slept under the stairs "maybe three times in the last two years".

The tenant testified that he is not responsible for the conduct of his guests once they leave the interior door to his apartment. The tenant testified "how am I supposed to be responsible for what my guests do once they leave? I don't think my friends would [steal]".

The advocate quoted the following passage from a Residential Tenancy Branch Decision dated May 11, 2021. The decision is on the landlord's application for an emergency end to tenancy filed against L.R., pursuant to section 56:



Although I find that there have been significant issues faced by the landlord and residents in the building which involve theft and unauthorized access into the building, I find that these matters are still being investigated by the police. I find that the landlord has provided insufficient evidence to support that [the tenant] is responsible for these matters.

Counsel G.M. submitted that the May 11, 2021 decision is a completely different matter and is not relevant to the outcome of this proceeding. The advocate submitted that the evidence is the same and the May Notice that this file involved, was similar.

Resident building manager P.J. testified that the tenant's guest, J.B., disturbed other tenants of the subject rental building on February 27, 2021. The landlord entered into evidence a letter dated February 28, 2021 addressed to tenant L.R. Resident building manager P.J. testified that it was served on both tenant L.R. and the tenant. The letter February 28, 2021 letter states:

On Saturday 27<sup>th</sup> February at around 5 pm, an individual seized the opportunity to breach building security by wedging a door open as an authorized guest exited the building. Once inside he proceeded to attempt unauthorized access to the building via the elevators. Following unsuccessful attempts began harassing residents, demanding access to the 4<sup>th</sup> floor to see [the tenant]. Each resident refused his demands and one tenant point blank asked him to leave which he refused. The tenant was understandably left feeling unsafe and unreasonably disturbed.

This individual posed a security risk endangering the safety, rights or interests of the building and its residents. As the tenant of [the subject rental property]. you are responsible for its occupant, your sub-tenant, [the tenant], and the people associated with him. We ask that you ensure this individual, and any other guests visiting your sub-tenant do not harass or interfere with other tenants or enter the building unauthorised. We will be contacting the police regarding this matter.

The landlord entered into evidence video stills of the above incident as well as stills on February 6, 9, 12, 13, and 15, 2021. Counsel submitted that the individual shown in all the stills is J.B. Resident building manager P.J. testified that the photographic stills taken at the entry phone on the dates above match the entry phone records showing the tenant granted access to the individual seen in the photographic stills. The entry phone records stating same were entered into evidence.

The tenant testified that the person seen in the photographic still dated February 6, 2021 at 4:47 p.m. is J.B. The tenant testified that the person seen in the photographic still dated February 9, 2021 at 10:09 a.m. "kinda looks like [J.B.]". The tenant testified that the person seen in the photographic still dated February 15, 2021 at 12:25 p.m. resembles J.B.

The tenant testified that he let J.B. into the subject rental building on February 6, 9, 12, 13 and 15 "if they say I let him in". The tenant testified that prior to March 4, 2021 he did not have any concerns letting J.B. into the subject rental building and that he has always been respectful. The tenant testified that on March 4, 2021, after speaking with the police, he told J.B. not to return because "I didn't want any bullshit" and because it was causing him "too much grief".

The landlord entered into evidence four emails from other tenants of the subject rental property detailing the February 27, 2021 incident described in the February 28, 2021 letter above. The tenant testified that he received the above complaints because the landlord cut off access to his entry phone.

L.R. testified that theft of packages at the subject rental building is common. Counsel G.M. requested the tenant read a section of a letter written by L.R. and entered into evidence by the tenant. The relevant portion of the aforementioned letter states:

There are also no theft of packages within the building many times residence would as the tenant to sign or pick up a packages for them.

Counsel G.M. asked L.R. to clarify the discrepancy between her testimony in this hearing and the letter she wrote. L.R. testified that "well you're pointing at us that we have something to do with the theft. I don't know where you are going with this, I'm not sure." L.R. testified that she did not report theft of her packages because they were of little value.

Resident building manager P.J. testified that in addition to the tenant's guests stealing from the subject rental property, the tenant has significantly interfered with other tenants of the subject rental building by breaching public health orders and causing late night disturbances. Resident building manager P.J. testified that after the February 27, 2021 incident, and after speaking with an Information Officer with the Residential Tenancy

Branch, the tenant's entry phone was temporarily disconnected from February 28, 2021 to March 1, 2021, when it was re-instated.

Resident building manager P.J. testified that on March 4, 2021, the same person who gained unauthorized access to the subject rental building on February 27, 2021, was witnessed shouting at the entry phone "let me see [the tenant]". The tenant was then seen departing the subject rental building with the above noted individual. Resident building manager P.J. testified that following the March 4, 2021 disturbance, the landlord served L.R. and the tenant with a letter dated March 4, 2021. The March 4, 2021 letter is addressed to tenant L.R. and details the above incident. The March 4, 2021 letter further states:

....We are receiving an increase in complaints regarding [the tenant], the people he is bringing into the building and the suspicious late-night visitors and activities around [the subject rental property]. We posted a letter on your door earlier today about [the tenant] and his guests disregard for the Provincial restrictions in place. Tenants are growing more concerned for their safety and security. They are asking us to do something about this.

Therefore, in the interest of protecting the safety, security and lawful rights of the tenants the solution is to either reappropriate the Entry-phone for [the subject rental property] to your self (the registered tenant of [the subject rental property].) to your current phone number: [redacted for privacy] or the Entry-phone for [the subject rental property] be removed altogether....

Resident building manager P.J. testified that L.R. responded to the above letter via email on March 5, 2021. The March 5, 2021 email was entered into evidence and asks the landlord to completely disconnect the entry phone for the subject rental property and to remove the tenant's name from the directory. Resident building manager P.J. testified that pursuant to the March 5, 2021 email from L.R., the tenant's name was removed from the directory and the entry phone was disconnected from March 5, 2021 to the present date.

L.R. testified that she asked for the entry phone to be completely disconnected to protect the safety and security of the tenant's neighbours

The advocate submitted that the tenant's fob was first disconnected on February 18, 2021, not on Feb 28, 2021. The advocate submitted that starting on February 18, 2021

any person seeking to be buzzed in to the subject rental property, had to go through a laborious process of dialing an operator to be let in which could take upwards of 45 minutes. The advocate submitted that this process caused the tenants guests frustration which resulted in the email complaints received by the landlord against the tenant.

The advocate submitted that if the landlord hadn't disconnected the tenant's entry phone on February 18, 2021 the issues regarding the tenants' guests yelling and the enter phone and loitering outside the building would not have occurred. The advocate submitted that the landlord intentionally cut off the enter phone which caused further issues, in an attempt to build their case for eviction. The advocate submitted that the tenant never received security complaints prior to the February Notice.

The tenant entered into evidence a letter from the tenant to the landlord which states that his guests are not able to be buzz directly to his unit and must first go through an operator. The tenant states:

So I would like to know why has my intercom been shut off, since this is the only reason I can come up with as to why it would no longer work. Since it's only stopped working since [L.R.] received an eviction notice from the management, stating I had let someone in that propped open the door upon leaving; which lead to another individual entering and subsequently stealing something from the building.

I find this ironic since earlier today Saturday the 26<sup>th</sup> of February in the late morning I had a knock at my door, where I discovered someone I would've preferred not to have over at the time. I asked how he got up to my apartment, and he told me that the manager had let him up because my intercom wasn't working. So could you please reconnect my intercom so I can control who I let in, because I would rather not have seen him at that time.

Resident manager P.J. testified that he never let anyone into the subject rental building to see the tenant. The tenant testified that J.B. told him that resident building manager P.J. let him in on the morning of February 27, 2021. The tenant testified that he erred in writing Saturday the 26<sup>th</sup> of February in the above letter, and that it should have read Saturday the 27<sup>th</sup> of February.

Resident building manager P.J. testified that the tenant did not inform him about the entry phone sending guests to a Shaw operator; however, it was brought to his attention

by other tenants whose guests were also sent to an operator to be let in. The resident building manager testified that security looked into the issue and the issue was caused by a software glitch which was soon rectified.

The landlord entered into evidence an email from security to resident building manager P.J. dated March 12, 2021 which states:

Following the software/hardware upgrade on Feb 18<sup>th</sup> of this year, there were a few entries which had been corrupted during the course of the transition. This included affected units losing their proper internal IDs as well as reverting their phone numbers from the previous entry to a '0', causing those buzzing the tenants to be connected to the Shaw operator service.

...I contacted Shaw after my first visit on Mar 3<sup>rd</sup> and advised them of the issue. I also contacted the manufacturer support for the software before my second visit on Mar 5<sup>th</sup> to ensure this issue became known. The issue, having stemmed from the upgrade, should not persist with the proper corrections being made to the affected entries which we identified during my second visit....

The entry phone records entered into evidence show that the entry phone granted access to the subject rental property between February 18, 2021 to February 27.

The tenant entered into evidence an email chain between L.R. and resident building manager P.J. On February 26, 2021 at 8:10 pm L.R. advises resident building manager P.J. that the main door is not locking behind people. On February 27 resident building manager P.J. responds that in future, L.R. should call the "after hours emergency line especially in situations that would warrant an emergency repair such as damage to the building door necessary for the health and safety of tenants, where the building and property are at risk. We all have a shared responsibility to ensure the safety and security of our home, contacting the landlord or designated contact person as soon as possible when a serious problem arises. In the past you have texted me with issues, I find it strange that you choose to email a security matter knowing I wouldn't see this unit the following day? Fortunately, another tenant contact the emergency line and we were able to rectify the issue with the front door promptly...."

The tenant entered into evidence an "Alarm Activity Report" pertaining to the subject rental property on February 26, 2021. The report describes the security issue as "front door may be ben in the frame and may not full close" at 8:45 p.m. At 8:54 p.m. the report notes that building manager P.J. "called back and said he's called [a locksmith]".

Resident Building Manager testified that the doors were fixed the same day the issues were reported.

The tenant entered into evidence an email from L.R. to resident building manager P.J. on February 25, 2021 which states: "Just wanted to let you know that we went through loading bay door and noticed it didn't close completely behind us. We had to go back up and push it shut to lock it." Resident building manager P.J. responded less than two hours later: "Thank you for letting us know." The tenant entered into evidence photographs of the loading dock doors, one photograph shows the doors fully closed, the other shows the door not fully closed. L.R. testified that she took the photographs described above. L.R. testified that she did not remember when the photographs were taken, but likely sometime between February and April 2021.

L.R. testified that she sent the February 25, 2021 email because on February 18, 2021 she was served with the February Notice and needed to build her case against the landlord and produce evidence that the loading doors don't work properly. L.R. testified that prior to February 25, 2021, the loading doors did not close properly and that she verbally notified the previous resident building managers of the issues, but did not previously report the issues in writing.

L.R. testified that people who live in the subject rental building know that they have to pull the loading bay doors closed for the doors to latch but that guests would not know to do so.

Both parties agree that the loading bay doors open to the outside of the building and are separate and apart from the parking garage access.

The tenant entered into evidence photographs of a truck taken on February 25, 2021 which prevented the parking garage gate from closing. L.R. testified that the owner of the truck left both doors open and that anyone could have walked in.

L.R. testified that the loading bay doors would not close on their own and you had to pull them closed or they would stay ajar. L.R. testified that the doors were fixed in June 2021 and an alarm goes off if they are not closed.

The tenant entered into evidence a notice posted in the subject rental building by the landlord titled "IMPORTANT BUILDING SECURITY UPDATE". The notice states that

alarms have been added to the fire exits as well as the loading bay doors. If these doors are held open for an extended period of time the alarm will be triggered.

Resident building manager P.J. testified that the alarms were added because of the January 29, 2021 theft caused by the tenant's guest. The advocate suggested to resident building manager P.J. that it took the landlord months to secure the doors because security is a secondary concern to the landlord. The resident building manager P.J. testified that security is not a secondary concern and that the loading bay doors closed; however, due to the actions of the tenants guest's additional security, that being the alarms, were added.

The advocate submitted that the subject rental building has door issues. Resident building manager P.J. testified that any door issues that the building had in February 2021 are not relevant to the January 29, 2021 incident because the doors were working at that time and were propped open by the tenant's guest.

The advocate requested resident building manager P.J. to point out what photographs show the loading door being propped open by the tenant's guest. Resident building manager P.J. testified that the series of security video stills taken on January 29, 2021 between 2:06 a.m. and 2:08 a.m. show the doors being propped open.

The advocate submitted that the landlord did not provide any video stills from the security system from 2:08 a.m. to 6:06 a.m. and that someone else could have propped the door open in that time. The resident building manager P.J. testified that security stills between 2:08 a.m. and 6:06 a.m. were not provided because no one was seen in the footage between those time stamps. The advocate then submitted that the security stills do not show the loading bay doors are propped open.

Resident building manager P.J. testified that the tenant and the tenant's guests breached public health measures. The landlord entered into evidence a letter addressed to L.R. dated March 4, 2021, written by resident building manager P.J. as an agent for the landlord. The resident building manager P.J. testified that the below letter was served on tenant L.R. and the tenant. The letter states:

We are receiving numerous reports from tenants concerned by [the tenant's] lack of regard for the Provincial restrictions in place to help stop the spread of COVID-19. Some restrictions are made by the Provincial Health Officer (PHO) under the Public Health Act and others are made under the Emergency Program Act

(EPA)..... On the 1<sup>st</sup> March, 2021, at 02:45am in the morning a group of 4 people entered the building after buzzing [the subject rental property] and a female member of the group failed to wear a mask. Later that day, [the tenant] was seen in the lobby at around 11:20am with a male guest with blonde hair both failing to wear masks in the lobby and when entering the elevator. Upon review of security footage of the Lobby area of the building at 11:20pm [the tenant] enters the building unmasked.

Please note: Clear signage has been established around the building since November 2020 that there is a mandatory mask policy in place.

Part of the Provincial restrictions here in BC: *There should be No social gatherings of any size at your residence with anyone other than your household or, if you live alone, your core bubble. For example: Do not invite friends or extended family into your residence.*

This raises the questions as to why a group of 4 people are arriving at 02:45am to see [the tenant]....

Resident building manager P.J. testified that the tenant breached the strata bylaws by smoking in the subject rental building. The landlord entered into evidence a letter dated March 9, 2021 to L.R. from the landlord which states:

It is part of our job to ensure the health and safety of all residents in the building, as well as following strata and city bylaws. It was observed that on the evening of March 2<sup>nd</sup>, 2021 the occupant of [the subject rental property, the tenant] was seen walking through common areas of the building with a lit cigarette.

Please be aware that smoking in your suite, out the suite window, or on you suite balcony is unacceptable and against strata bylaw and house rules, as noted below:

*HOUSE RULES*

- 1. SMOKING IS PROHIBITED IN SUITES AND ON ALL COMMON PROPERTY OF [THE RESIDENTIAL BUILDING]**

*STRATA BYLAW*

...



***2.(b) Smoking and/or vaping is not permitted at any area on the property. This includes the suites, parkade stairwells, patios, balconies, and lawn areas***

As well, under the *Tobacco and Vapour Products Act*, smoking is banned in common areas of apartment buildings, condominiums and dormitories, including elevators, hallways, parking garages, laundry facilities and lobbies; it is banned within 6 metres of public entranceways to apartment buildings, open windows and air intakes. Nonetheless, our strata bylaw takes precedence over the provincial requirement, according to Smoke Free Housing B.C....

The resident building manager P.J. testified that the above letter was posted on the tenant's door and on L.R.'s door.

The landlord entered into evidence six video stills taken 6:33 p.m. and 6:34 on March 2, 2021. Resident building manager P.J. provided affirmed testimony via a narration of the events that can be seen in the video stills. Resident building manager P.J. provided the following summarized testimony regarding the stills:

- At 6:33:58 p.m., the tenant can be seen standing at the enter phone outside of the subject rental building with a lit cigarette in his mouth.
- At 6:33:58 p.m. the tenant can be seen at the enter phone reaching for the front door handle with a lit cigarette in his mouth.
- At 6:34:00 p.m. the tenant can be seen walking through the front door with a lit cigarette in his mouth.
- At 6:34:24 p.m. the tenant can be seen standing by the elevator holding the cigarette up to his mouth and inhaling from the cigarette.
- At 6:34:26 p.m. the tenant can be seen hiding his cigarette from the security cameras.

Resident manager P.J. testified that he knows that the person seen in the video stills is the tenant because he has had many interactions with the tenant and recognizes him. Resident manager P.J. testified that in addition to the above, the fob records also confirm that the person seen in the above video stills is the tenant. The landlord entered into evidence a fob transaction report that shows that the tenant was granted access to main building E at 6:33:25 p.m. on March 2, 2021 and was granted elevator access at 6:34:28 p.m. The resident manager testified that the building fobs are registered to each tenant and the fob system tracks when each fob is used.

The tenant testified that he was smoking outside the subject rental building but put the cigarette out on his pants before entering the subject rental building. The tenant testified that he did not want to put the half unsmoked cigarette in his pocket and his hands were full, so he put the cigarette in his mouth. The tenant testified that in the video still marked 6:34:24, he is not taking a drag but taking the cigarette out of his mouth. The tenant testified that he smokes one pack per week and usually puts his butts in an ashtray across the street from the subject rental building when they are finished.

The tenant testified that prior to May 18, 2021, he did not receive any notices or correspondence from the landlord, they were all sent to L.R., but no to him.

Resident building manager P.J. testified that the subject rental property is non-smoking, and that the landlord has received complaints from other tenants of the subject rental building that the tenant smokes in the building. Counsel for the landlord submitted that the tenant was advised of the most recent update to the Strata By-Laws which were made in October of 2020. The landlord entered into evidence the October 2020 Bylaws. Sections 4(a) and 4(b) of the Strata By-laws state:

#### **4. Smoking & Cannabis**

(a) For the purpose of this Bylaw, the following definitions apply:

\*“smoke” or “smoking” includes inhaling, exhaling, burning or carrying of a lighted cigarette, cigar, pipe, hookah pipe or other lighted smoking equipment that burns tobacco or other weed substances (including, for clarity, marijuana); \*“Vape” or “vaping” includes inhaling, exhaling, vaporizing or carrying or using an activated e-cigarette.

(b) Smoking and/or vaping is not permitted at any area on the property. This includes the suites, parkade, stairwells, patios, balconies and lawn areas.

The tenant testified that he did not receive copies of the bylaws until he was served with them on January 21, 2022. The advocate submitted that the resident manager P.J. only gave copies of the bylaws to L.R. in advance of the May 18, 2021 hearing. The resident manager testified that the tenant was provided with copies prior to January 21, 2022 but could not recall the specific date they were provided. Both parties agree that L.R. was served with copies of the bylaws prior to the May 18, 2021 hearing. The advocate

submitted that the tenant did not receive copies. Resident building manager P.J. testified that the tenant was L.R.'s witness in that hearing and would have seen them.

L.R. testified that she has been a smoker for 35 to 36 years and only saw the tenant smoke in the subject rental building many years ago when smoking inside was allowed and she and the tenant lived together in a different unit in the building. L.R. testified that she is currently aware that smoking inside is not permitted.

L.R. testified that she has reason to believe that the tenant is also aware that smoking is not permitted inside the subject rental building. L.R. testified that she agreed that smoking can cause serious damage to property and can negatively affect the health of others.

L.R. testified that she has never seen the tenant smoke inside the subject rental building and that she has seen him smoke outside the subject rental building. L.R. testified that the tenant told her about the alleged smoking inside the subject rental property on March 2, 2021. L.R. testified that the tenant told her the cigarette was not lit and he left it in his mouth because his hands were full. L.R. testified that the tenant would have worn his mask if people had been around.

Both parties agree that on March 13, 2021 at approximately 4:00 a.m. the tenant propped open a side door to the subject rental property. The tenant testified that he propped open the door so he could get back in after he finished his cigarette. The tenant testified that he had his cigarette around the corner from the side door.

The landlord entered into evidence an email from another resident of the subject rental building dated March 13, 2021 at 4:10 a.m. which states that she found the side door propped open with a small metal pipe, which she moved out of the way to allow the door to close.

The tenant testified that on March 13, 2021 after he finished his cigarette he found the door closed and so walked to the front door to enter the building. The tenant testified that this was the first time he ever propped open a door to the subject rental building. The tenant testified that he propped open the door because his fob did not work and he didn't want to walk to the front door.

The advocate submitted that the landlord disconnected the tenant's fob from working on the side doors. Resident building manager M.J. testified that no fobs work on the side doors at that time of night for security reasons.

Resident building manager P.J. testified that the tenant received a noise complaint from the subject rental City. The landlord entered into evidence a letter dated March 15, 2021 from the subject rental City regarding the subject rental property which states:

City records show that you are the owner of the above-cited unit [the subject rental property]. This letter is to advise you of the concerns we have received regarding late night/early morning noise resulting from a gathering of two or more persons (that can be easily heard from outside the premises) emanating from the above-cited [subject rental property], in contravention of the Noise Control By-law....

Further, in response to the COVID-19 Pandemic, and the most recent Provincial Health Order, the following conditions apply:...

(3) Despite sections 1 and 2, a person who lives on their own (hereinafter referred to as the "resident") may have up to two other persons present at their private residence or vacation accommodation, if the other persons are individuals with whom the resident regularly interacts. If the other two persons regular interact with one other, as well as with the resident, they may be present in residence at the same time.

Peace and quiet are important components in the livability of [the subject rental city] neighborhoods, and we request you comply with the By-law. Future violations may result in possible charges being laid against the owner of the premises. The minimum fine for each offence is \$250.00.

Both parties agree that the tenant never signed a form K. Resident building manager P.J. testified that the tenant refused to sign a tenancy agreement or a form K. Both parties agree that prior to the service of the February Notice, the resident building manager did not speak with the tenant about the alleged issues detailed in that notice.

Both parties agree that M.J. completed an inspection of the subject rental property on March 16, 2021. Resident building manager M.J. testified that following the inspection a letter dated March 17, 2021 was posted on the tenant's door and on L.R.'s door.

Resident building manager P.J. testified that numerous fire code violations were found: The March 17, 2021 letter states in part:

Combustible flammable containers are being stored inside [the subject rental property]. Multiple heavy items, including a rack of pots and pans and several bicycles and chains were observed hanging from the fire sprinkler line pipes. All residents have been informed repeatedly that items are not to be hung or suspended from fire sprinkler line pipes. The unit smelled so strongly of cigarette smoke, all observants bore witness that smoking is likely occurring presently in suite and has been occurring for some time, despite [the tenant] stating he does not smoke in the unit and has not smoked in the unit for 8-9 years.

Photographs of the issues outlined above were entered into evidence. Resident building manager M.J testified to the accuracy of the contents of the above letter and identified the alleged fire code violations in the photographs. The tenant testified that the photographs entered into evidence are photographs of the subject rental property taken on March 16, 2021.

Resident building manager M.J. testified that fire services were dispatched to address the fire code violations on March 25, 2021 and a follow-up letter dated March 30, 2021 was posted on both the tenant and L.R.'s doors. The letter states:

As you are aware, [partial redaction for privacy] Fire and Rescue Services was dispatched from the Office of the Fire Commissioner to conduct a Fire Safety Inspection of [the subject rental property] on March 25, 2021.

**As per the instructions of the Fire Safety Inspection Team, the following fire safety violations were observed, and action must be taken according:**

- The entrance door must be able to fully open and operate without any obstructions. Remove all items blocking the full extension of the open door.
- Clear access paths through the unit are to be maintained.
- The electrical cable and light hanging from the sprinkler line pipe must be removed, no wiring or items of any sort are to be attached to the sprinkler line pipes or heads.

- The numerous items stored beneath the large wooden structure must be removed as it poses a fire risk due to the structure obstructing the fire sprinkler system.
- Concern was expressed the apartment is overly cluttered and poses a fire safety risk; the occupant offered that he would start to remove excess items to make the unit more habitable and safer.
- A reminder that no propane tanks or flammable substances are to be stored in the unit...

Resident building manager M.J. testified that the amount of combustibles and the presence of propane in the subject rental property creates a fire hazard. Resident building manager M.J. testified that this danger was aggravated by the use of the sprinkler system as a storage rack. Resident building manager M.J. testified that fires that start in one unit can travel to other units and that the fire code violations of the tenant put the health and safety of every tenant in the subject rental building at risk.

L.R. testified that she received numerous notices and warnings from the landlord pertaining to the tenant between February 2018 and May 2018 but that prior to the February Notice, the last time she received a notice from the landlord was in August of 2020 because the tenant installed a camera outside his door. The tenant removed the camera at the request of the landlord.

The tenant testified that prior to the February Notice, the landlord did not provide him with any warning letters.

L.R. testified that after February 18, 2021 the barrage of notices was overwhelming, and that she received at least 20 of them. L.R. testified that a number of tenants have been bullied out of this building. L.R. testified that the landlord wants to evict the old tenants so that they can increase the rent. L.R. testified that this is her 12<sup>th</sup> hearing and that the landlord's tactics are based on corporate greed. L.R. testified that the notices and correspondence from the landlord pertaining to the tenant were all addressed to her and that only she received them, not the tenant.

L.R. testified that the tenant has had bikes hanging from the sprinkler system since 2009 and only now that the landlord is trying to evict the tenant has it become an issue. The advocate submitted that it was perfectly fine for the tenant to hang items such as bikes from the sprinkler lines. L.R. testified that the tenant's propane tanks are for his ball launcher and are now stored on the balcony. L.R. testified that the landlord only

completed the inspection because the landlord is trying to build their case to evict the tenant.

The tenant testified that he believes the landlord is blaming him for the theft because they want to move in a new tenant in who will pay more rent. The tenant testified that he sees the landlord renovate units when old tenants leave and rent them for more money. The tenant testified that his rent is substantially below market value. The tenant entered into evidence a message from L.R. to the landlord's previous property manager "E". The message is dated September 3, 2019. The message complains about the previous resident building managers conduct and that the previous building manager's conduct comes "from the direction of corporate". The tenant testified that "corporate" wants all the old tenants out.

The tenant entered into evidence a settlement agreement between the landlord and a previous tenant (B.M.) of the subject rental building. The tenant agreed to move out by May 31, 2019 and the landlord agreed "to provide the Tenant with an apology for any verbal and bureaucratic abuse the Tenant has been subjected to by the building managers [previous resident building managers, names redacted for privacy] in January 2018 until the present." Both parties agree that Resident building manager P.J. and M.J. were not the resident building managers at the time the settlement agreement was drafted.

The tenant entered into evidence a signed statement from B.M. that alleges that the landlord's previous resident building managers verbally abused and threatened him. B.M. alleges that the eviction was based on trumped up charges.

The tenant testified that he used to work for the landlord but that the previous resident managers fired him and fabricated evidence to evict him.

Resident building manager M.J. testified that she is not aware of any bullying by the previous resident building managers and no other complaints have been received. Resident building manager M.J. testified that the allegation of bullying is an invented narrative.

The tenant testified that before M.J. was hired as the current resident building manager, he was friends with her, correspondence in which M.J. asked to buy cigarettes from the tenant were entered into evidence. The tenant testified that once M.J. became a resident building manager they stopped being friends. The tenant entered into evidence

a photograph of his birthday party. The tenant testified that the previous building managers are in the photograph and used to be his friends.

Resident building manager M.J. testified that prior to becoming the resident building manager she was a friendly acquaintance of the tenant's and would "bum" cigarettes from the tenant. Resident building manager M.J. testified that she has no historical animosity towards the tenant and has tried to be fair. Resident building manager M.J. testified that she did not have a falling out with the tenant but when she became the building manager she "unfriended" him on Facebook because she had a duty to act fairly to all tenants.

The tenant entered into evidence a petition in which he canvased neighbours to support him in a 2019 Residential Tenancy Branch proceeding. The tenant testified that this was entered as historical evidence. The petition dated October 1, 2019 states:

I the undersigned support [the tenant] in his fight to stay his eviction. Over the years that I've known [the tenant] he has been pleasant and cordial towards myself and other tenants. He has always been very helpful and courteous, often holds the door or offering a hand with things. [The tenant] has offered moving services and junk removal services to the tenants of the building and I recall he used to take care of the recycling and did odd jobs around the building.

In speaking with [the tenant] it is my understanding that he feels targeted by the resident managers of the building and its my hope that his can be resolved now that they are leaving your employment. I have no issue with [the tenant] remaining in the building and will most likely use his services in the future.

Resident building manager M.J. testified that the landlord was concerned that the signatories were not advised that their previously acquired signatures were being used for this dispute. Resident building manager M.J. testified that she contacted as many signatories as possible with the following email:

We wanted to reach out, because we think you might not be aware that [the landlord] has received documentation with our signature on it supporting [the tenant] in current 2021 eviction proceedings. These eviction proceedings are in place due to documented criminal activity that occurred in our building and continues to occur because of the action of [the tenant] and his guests.



Our concern is that you many not have been informed that your support from 2019 is being used to support behaviour in new eviction proceedings for 2021...

Resident building manager M.J. testified that she received a number of responses from the signatories who stated that the tenant did not have approval to use their signatures now or in the past. The following is a brief summary of each of the letters regarding same entered into evidence by the landlord.

The landlord entered into evidence a signed letter dated May 6, 2021 from tenants whose names appear on the petition, which states:

....After viewing the document [the tenant] submitted in October 2019, we believe [the tenant] collected our signatures under false pretenses. He came to our door and asked us to sign a going away card for [the previous resident building manager]. We had no reasons to doubt this claim as we knew [the building managers] were moving on to a new building. [C.V.S.] signed the paper with both of our names. He did not sign our last names because we though we were signing a casual greeting card, not a legal document.

It is our belief that [the tenant] attached our signatures to a letter he wrote after the fact and submitted them as a petition of support. The document is fraudulent and should not have been accept as proof of support back in 2019.

The tenant testified that the authors of the above letter are lying and are friends of the resident building managers P.J. and M.J.

The landlord entered into evidence another letter regarding the 2019 signatures which states:

After reviewing the documents that you have forwarded to me, I feel that the main document, for which my support was given in 2019, may have been altered. The second paragraph, as I recall, was not contained in the original document from 2019....

Resident building manager M.J. testified that the author of the above letter requested her name be kept confidential for fear of reprisal from the tenant. Resident building manager M.J. testified that several tenants contacted about their 2019 signatures also reported that either the 2<sup>nd</sup> paragraph was added after they signed the document, or

that they signed going away card, and not the tenant's petition. Resident building manager M.J. testified that the other tenants were fearful of coming forward as they believed they would face retribution from the tenant.

The tenant's advocate submitted that not all of the people who signed the 2019 petition retracted their endorsement of the tenant following the landlord's "cautionary" email. The tenant entered into evidence a letter from a tenant who confirmed her support of the tenant after receiving the landlord's email.

The tenant entered into evidence two character references from 2019 and five character references from 2021.

The landlord entered into evidence seven letters/emails of complaint against the tenant, all of which have been redacted to remove the name of the author. Resident building manager M.J. testified that the complainants requested that their names be redacted for fear of reprisal. The tenant testified that while the letters/emails are anonymized, due to their contents, he can tell which tenants in the subject rental building wrote them.

The complaint email dated July 24, 2021 states:

....I have lived in this building for 6 years, and in those years have had multiple incidents involving [the tenant] and / or guests that he has let into the building...here is the bullet point form.

- Finding [the tenant] absolutely intoxicated on the lobby couch, trying to ask him if he's ok and wants to help up to his suite...
- Female guests of his in the hallway on the 4<sup>th</sup> floor in the middle of the night arguing with him, completely oblivious to the fact the entire floor is hearing them and have to deal with their screaming
- A friend who he repeatedly let in the building during heavy COVID protocols, sneaking in the front door & asking me to let him up to the 4<sup>th</sup> floor after I confirmed who he was wanting to see. I told him no...
- Multiple thefts from the lobby associated with his visitors
- Theft of package of tenant from the 4<sup>th</sup> floor
- His forging of signatures in support of him not being evicted in 2021, which some of the original signatures were given to him in 2019, and the others which he signed without consent from the individuals. My name included on this fake petition...

- The unanimous feeling of uneasiness on the 4<sup>th</sup> floor/ in the building knowing he is able to continually break rules without facing any actual repercussions from the tenancy board.

...I am requesting my identity remain anonymous when being shared with his case worker or with [the tenant]. If the question is “do I feel there would be vengeful repercussions if he finds out who in the building spoke out against him?”, my answer would be yes, so please do not involve my name.

In response to the above letter the tenant testified as follows:

- The author of the above letter did find him intoxicated on a lobby couch.
- A female guest of his yelled at him in the hallway “maybe one time”.
- Thefts from other tenants on the fourth floor is not true.
- J.B. was trying to get to his unit.
- He never forged signatures.
- There is no unanimous feeling on the fourth floor and that lots of people still talk to him.
- The author is just assuming the thefts are associated with his guests.

The complaint email dated July 12, 2021 states:

In regards to the issue of what is happening on the 4th floor I can say that I have seen questionable people on my floor that obviously don't belong here and certainly aren't increasing my feeling of safety while living here. Especially in the last 12 months...

In response to the above letter the tenant testified as follows:

- Anyone can be questionable if you don't know them

The complaint letter dated July 21, 2021 states:

As you know, I have lived on the 4<sup>th</sup> floor of the [subject rental building] for roughly 7 years very close to [the subject rental property]. During this time I spent living in the South East wing of the building I saw the following:

1. Strangers coming onto our floor and to [the tenant's] house at all times of day and night
2. A few times while I was leaving on the way to work I saw [the tenant] with some suspicious looking people.
3. During the last year and half I've had several package go missing from my door step.

4. One day while leaving my apartment several police officers were in the hallway flanking [the subject rental property] [the tenant's] door.
5. An Ex-neighbour and friend of mine a couple of years ago told me she finds this neighbour creepy and recoiled when we passed him in the elevator. I later discovered from her that he was harassing her and she felt unsafe

In response to the above letter the tenant testified as follows:

- Numbers 1, 3 and 5 are false.
- I don't harass women.
- Swat was called due to fumes from the subject rental property; however, it was only eucalyptus oil.

The complaint email dated July 13, 2021 states:

...As discussed, there were many times I noticed unusual noises on the fourth floor

- Unusually loud noise last December (drilling) and this January (hammering).
- Dragging/moving/wheeling noise past midnight (between 12 and 2-3 AM). Often, the person/people walked back and forth along the corridor several times that I would get woken up....

One more thing I recently started to notice is the cigarette and weed smoke/smell coming into my unit through the windows....

In response to the above letter the tenant testified as follows:

- The noise could come from anywhere, not necessarily coming from his suite
- The smell of weed is not coming from his suite.

The complaint email dated August 30, 2021 states:

This is my official statement regarding [the tenant]. For my safety, I need assurance that my name, identity and any defining characteristics will not be shared....

Over the years, there have been numerous occasions where [the tenant] has made sexually charged comments about my appearance, including comments about my body. While I always knew these comments were inappropriate, I just

tried to ignore them and avoid him as much as possible. I never made a formal complaint about his behaviour towards me, and in hindsight, I regret that. However, I have mentioned it to several neighbours over the years, as well as to [name redacted for privacy] who used to work for the building.

In all the years I've lived at [the subject rental building], [the tenant] is the ONLY tenant who has ever made inappropriate comments towards me, and until recently, he was the only tenant who made me uncomfortable.

Since this eviction process started, [the tenant's] good friends- a couple who lives on the first floor [unit numbers redacted for privacy]- have made me feel very nervous, particularly the woman (I don't know her name. She has blonde hair and often walks [the tenant's dog]). We have always been polite and cordial with each other but since the eviction proceedings began, whenever I see her, I'm met with the most aggressive, hate-filled glares. She is clearly trying to intimidate me or bait a reaction...

This brings me to the most concerning issue- that [the tenant] and his friends are a safety threat to tenants at [the subject rental building], especially to women who live alone. This has become very apparent over the last year.

One of the most concerning things about [the tenant] is the increased drug activity he's bringing into the building. In February/March 2021, I observed a significant increase in the number of people visiting him. I usually take my dog out around [redacted] and over the course of these two months I encountered disturbing looking men buzzing [the tenant] several nights a week around this time. I know they were here for him because I heard his voice over the intercom. These men appeared to be in a state of walking comatose- like zombies- and their faces were covered in scabs and crusts- sign of very heavy drug use. It's very sad, but also poses a safety concern, especially for women, like me, who live alone. I did bring this to the attention of the building managers and shortly after (related or not) [the tenant's ] intercom was disconnected.

I believe that [the tenant] is a drug dealer (in fact, a few years ago, I witnessed [the tenant] selling drugs to [redacted] and that these men coming to the building are his customers.....

In response to the above letter the tenant testified as follows:

- I never made any sexually charged comments
- The woman described by the author is L.R., “I can’t comment on L.R.’s behaviour.”
- Drugs are not true
- There are many [tenant’s first name] in building, the author couldn’t know it was him speaking through the entry phone
- Walking comatose can’t be true
- The author can’t say the people buzzing in were heavy drug users, maybe just don’t have a clean face
- This whole thing is crap

Resident building manager M.J. testified that she has also received hate filled glares from L.R.

The complaint email letter dated July 24, 2021 states:

To preface this statement, please do not use my name in front of [the tenant]. He has had a history of violent behaviour towards me in the past and I don’t want him to know I had any involvement....

My issues with [the tenant] began back in 2014. He has a dog named [redacted for privacy] that became aggressive towards my dog. One day I was waiting for the elevator on the main floor. As I went to get on, he was getting off. His dog lunged at mine although he did have his dog leashed. It still scared me so I picked my dog up and moved down the hall to give them space. He began yelling at me, somehow he knew my name and kept saying it as he yelled, he also called by dog a pussy....

In July 2020, I was outside the main doors with my dog at about 5 pm. A man on a bike was at the buzzer and I heard [the tenant’s] voice answer and the man said “hey [tenant], I have some of that white powder you like”.

In March 2021, I tried to take my dog out at about 4 am. I went to the side door that leads onto [redacted for privacy]. When I got there, there was something that looked like a crack pipe propping the door open. I was really scared because anyone could be in that staircase so I didn’t even take my dog out, but I did kick the pipe out of the way and secured the door. I had to let my dog relieve herself on my floor inside my suite....

In response to the above letter the tenant testified as follows:

- I do not have a history of violent behaviour
- I can't control who my dog doesn't like.
- The author was careless with her dog.
- My dog did not lunge at the author's dog.
- I did not call her dog a pussy.
- I am not a criminal
- I was convicted of a criminal offence when I was younger but that does not mean I am a criminal now

The complaint letter dated 2021, month and day redacted, states:

I was approached by [the tenant], who introduced himself as a neighbour in the building. He saw my dog and went on to tell me his dog once attacked a small dog so viciously it held its head in her mouth and shook it around so hard the other animal's eye popped out...With a small dog of my own I immediately felt scared for her safety.

[The tenant] appeared glassy eyed and manic, talking incredibly fast but appearing unfocused. I assumed he was high. I thought about excusing myself but he kept talking at a breakneck pace. He started to complain about the building management, saying they were "illegally" trying to kick him out and how even though he had a friend who had left a door open so that another person off the street walked in and stole a bunch of packages meant for residents that also "wasn't his fault". He was looking me up and down in an uncomfortable way and commented on my clothing in a way that felt inappropriate....

In response to the above letter the tenant testified as follows:

- I was not high.
- I did not yell.
- The part about my dog is true, the attack happened at a park.
- Most of the other stuff is true.

Resident building manager M.J. testified that following a complaint about the tenant's aggressive dog, the tenant was sent a warning letter on July 26, 2021 re same. The warning letter was entered into evidence.

The landlord entered into evidence the following complaints received from other tenants of the subject rental property:

- April 6 (year not specified) – text message re tenant passed out on lobby couch.
- April 30, 2020- a resident reported suspected drug use and possibly blood in a stair well.
- May 13, 2020- email complaint regarding a large black truck with “a huge blue tarp parked out from and in the parking lot across the street. They come and go often throughout the night for the past 2 months and their truck is extremely loud. They once had their truck running from 11 pm till 3 am.”
- May 28, 2020- complaint email from a resident on the 4<sup>th</sup> floor regarding a package stolen from that tenant’s front door.
- June 8, 2020- complaint email from a different resident on the 4<sup>th</sup> floor regarding a package stolen from that tenant’s front door.
- September 25, 2020- complaint email “...the woman screaming/swearing outside of the [subject rental building] for [tenant first name] to let her in around 2 pm. I then saw her in the center (main) stairwell on the 4<sup>th</sup> floor around 6:30 pm. She had a cart and tons of stuff inside of the stairwell. I called the emergency line as I felt that witnessing her aggressive and unusual behaviour earlier could possibly mean a bigger issue for residents of the building.”
- October 9, 2020- complaint email alleging drug dealing/use from truck and person living in truck entering the subject rental building with keys and a fob.
- November 18, 2020- complaint email from a resident re package stolen from lobby.

Resident building manager M.J. testified that the black truck referred to in the complaint letters is the tenant’s truck. Resident building manager M.J. testified that all of the packages stolen from the fourth floor were between the elevator and the tenant’s door and that it would have been opportunistic for the tenant to pick them up on his way to his door. Resident building manager M.J. testified that resident building manager P.J. checked on the tenant when he was passed out on the couch and asked L.R.’s partner to deal with him.

Resident building manager M.J. testified that she lives at the subject rental building and is concerned for her safety as a result of the tenant and/or his guests. Resident building manager M.J. testified that the tenant verbally assaulted and yelled at her and that the tenant has a vein of anger and hate that she does not understand. Resident building manager M.J. testified that it is her job to keep the building safe and so the tenant needs to leave.



The landlord entered into evidence use and occupancy only receipts addressed to the tenant for rent paid from June to September 2021.

Resident building manager M.J. testified that the criminal investigation against J.B. is ongoing.

### Landlord Closing Submissions

Pursuant to the Fourth Interim Decision, Counsel for the landlord provided written closing submissions. Closing submissions for the landlord state in part:

#### *Allowing Unauthorized Access and Facilitating Theft of Property*

.... JB, the man who exited the rear door and left it propped open, is a friend of the Tenant and was permitted into the Residence by the Tenant. The Tenant and his witness, Ms. Reimer, both confirmed this during their testimony, affirming that JB entered the Residence to deliver a box of “recyclables” to the Tenant, and that they were “not responsible” for what JB did after he left [the subject rental property]. Entryphone transaction records for the Residence also confirm that JB was permitted into the Residence by the Tenant (Landlord evidence page 73).

The evidence suggests that an inference should be drawn that JB was involved in the theft of the packages, as his act of propping open the rear door directly facilitated the thefts, and there is no other rational explanation for JB propping the door open. Moreover, the thief left with the same red dolly that JB had delivered. At the very least, the evidence confirms that JB was permitted into the residence by the Tenant and proceeded to intentionally prop a door open that resulted in the theft of tenant’s property.

On February 27, 2021, JB was observed again obtaining unauthorized access into the Residence by wedging the main entrance door open (Landlord evidence pages 80 to 96), at which time he again began harassing tenants to get access to the Tenant. JB is seen holding the door open after a delivery driver leaves, wedging the door and stepping away, and then returning to the door to enter it (Landlord evidence pages 84 and 85).

The Tenant's witness, [L.R.], gave evidence that theft was very common in the building, although she never reported it. If true, this exacerbates the risks posed by allowing unauthorized access. The Tenant also confirmed during his testimony that leaving a door to the residence open poses a serious risk to others in the building. By extension, the Tenant ought to be aware that propping a door open, and thereby intentionally creating a serious risk to others in the building, is extremely egregious behaviour.

On March 13, 2021, a tenant informed the Landlord that she had found a side door to the residence propped open with a metal pipe, removed the pipe and closed the door (Landlord evidence page 118). The Tenant confirmed that he had propped the door open to go outside to smoke a cigarette. Surveillance video captured the Tenant re-entering the Residence through the main door (Landlord evidence page 120). The Tenant admitted in his evidence that he did not see the other tenant enter the door or remove the pipe. As the Tenant thereby left the propped opened door unattended, this indicates that the Tenant left a door to the Residence propped in a manner that allowed unauthorized access. The tenant who found the door propped open could have just as easily been a trespasser, and the Tenant would not have seen the trespasser, either.

#### Unreasonable Disturbance of Tenants

Multiple tenants have expressed longstanding concerns with the Tenant's behaviour and have felt intimidated and harassed by the Tenant (Landlord evidence pages 141 – 150). Such conduct includes violent behaviour, sexual harassment, impersonating management of the Landlord, obtaining signatures under false pretenses, using tenant signatures in doctored letters, intimidation, noise complaints, amongst others...

On March 15, 2021, the [subject rental property City] sent the Landlord a letter advising it of a number of concerns that it had received regarding late night and early morning noise resulting from a gathering of two or more people emanating from [the subject rental property]. (Landlord evidence page 98).

The Landlord was not involved in the issuance of the letter. Tenants have also raised substantial concerns about the Tenant's guests, and in particular, JB. Between February 6, 2021, to February 27, 2021, JB is seen entering the Residence through the main entrance on multiple occasions (Landlord evidence

pages 81 to 91). The Tenant affirmed in his testimony that the individual in these photographs was JB. Multiple tenants expressed concern to the Landlord over JB's presence and conduct over this period and, in particular, around February 27, 2021, in part, because JB obtained unauthorized access to the building by wedging the main door open, then was observed loitering, harassing tenants to "buzz him up" to see the tenant, flaunting Covid-19 restrictions, and in the view of some tenants, possibly connected to earlier thefts (Landlord evidence pages 92 to 96). One tenant, [N.D.], informed the Landlord at 5:19 PM that "[tenant first name] was coming to get him" (Landlord evidence page 92).

The residence's entryphone system was fully operational until February 18, 2021, and accordingly, the entryphone records for this period indicate that JB was permitted into the Residence by the Tenant (Landlord evidence pages 102 to 108). The only periods during which the Tenant could not grant access to guests using the entryphone system were from February 28, 2021, to March 1, 2021, and from March 5, 2021, onward at the request of the Tenant (Landlord evidence page 101).....

On March 4, 2021, JB was observed attempting to gain access to the Residence and shouting at the entryphone system, yelling to other tenants "let me in to see [tenant first name]" (Landlord evidence page 100). In response, the Tenant demanded that the Landlord disconnect his entryphone system immediately. Another tenant, [A.T.], indicates that "the past few days I have noticed what sounded like hours of someone on the security phone outside" (Tenant evidence page 83).

The Tenant has alleged that the disturbances caused by his guests are a result of the Landlord disconnecting his access to his entryphone. This is incorrect. As noted above, the only periods during which the Tenant could not grant access to visitors using the entryphone were from February 28, 2021, to March 1, 2021, and from March 5, 2021, onward. Even if the entryphone issues did inhibit access to the Tenant's guests during other periods, it does not follow that the Landlord or the entryphone issues are responsible for the conduct of the Tenant's visitors in response to those issues. Entryphone issues do not cause a guest to yell into an entryphone system for hours asking random tenants to let them in, or to loiter in the Residence and ask tenants to provide unauthorized access to the elevator. Entryphone issues did not result in disturbances from any guests other than JB, over this period.

The Tenant has indicated repeatedly that he does not believe he is responsible for the actions of his guests (Landlord evidence page 74; Tenant evidence page 60). The Tenant has also indicated that he remains good friends with JB and that he has no concerns with having him over as a guest at the Residence. The Tenant provided evidence that has continued to allow JB to come to the Residence but would meet him outside, which does not address the risks that JB poses to other tenants, particularly given his proclivity for obtaining and providing unauthorized access to the Residence....

*Breaches of Covid-19 Mandates*

Throughout the Covid-19 pandemic, the Residence has had notices posted reminding tenants to comply with Covid-19 mandates, including wearing face-coverings in common areas (Landlord evidence page 97; testimony of [resident building managers P.J. and M.J.]

Despite this, on March 1, 2021, the Tenant and a guest of his were observed in common areas of the Residence without wearing face coverings, in contravention of the Covid-19 mandates (Tenant evidence page 78). On March 2, 2021, the Tenant was observed with a lit cigarette in his mouth in common areas of the Residence, and without his face covered by a mask (Landlord evidence page 115). The evidence of the Tenant's witness, [L.R.], is that the Tenant would have had his mask pulled up and not have had a cigarette in his mouth if other people had been around, despite the fact that it is required to be worn regardless of whether other people are around. On March 4, 2021, the Landlord posted a notice to [the subject rental property], advising that this breached Covid-19 mandates and reminding him that this was not tolerated (Landlord evidence page 97). The Landlord's witness, [resident building manager M.J.], confirmed that the notice was posted to unit [the subject rental property].

The [subject rental City] also sent a letter regarding the Tenant's breach of Covid-19 mandates, indicating that the concern regarding breach such mandates is not limited to the Landlord.

As noted, tenants have also raised numerous concerns regarding JB not wearing a face covering in contravention of Covid-19 mandates.

Smoking in Common Areas of Residence

Both the Tenant and [L.R.] indicated in their evidence that they are aware that smoking in any areas of the Residence is prohibited. Despite this, on March 2, 2021, the Tenant was observed on surveillance footage entering the Residence with a lit cigarette in his mouth (Landlord evidence page 114).

Tenant's evidence was that he had flicked the cigarette out on his pants before entering and had kept it in his mouth because he was not done with it. The surveillance footage clearly shows a lit cigarette in the Tenant's mouth at 6:33:58 PM as he reaches for the main door and at 6:34:00 as the door is pulled open with his left hand. With his only available arm being used to open the door, the Tenant could not have put the cigarette out during this period. Over the next three seconds, the Tenant switches to using his right hand to hold the door open as he walks through (Landlord evidence page 114), which does not provide sufficient time for the Tenant to extinguish his cigarette.

[L.R.] indicated in her evidence that the Tenant kept the cigarette in his mouth because his "hands were full", although the Tenant is seen entering the Residence with a free hand while smoking (Landlord evidence page 114).

Further, there are other subsequent occasions and evidence of the Tenant smoking in the Residence. The inspection of [the subject rental property] conducted on March 16, 2021, indicated a "strong smell of cigarette smoke" (Landlord evidence page 117).

Undue Care of [the subject rental property].

The Tenant has failed on multiple occasions to maintain proper care of [the subject rental property], including multiple serious fire code violations. (Landlord evidence, pages 122 to 132). On March 25, 2021, [subject rental City] Fire and Rescue Services required the Fire Commissioner to conduct an inspection, wherein further fire code violations were found (Landlord evidence page 125).

The risk to other tenants presented by these violations is self-evident. [Resident building manager M.J.] confirmed that such fire hazards expose other tenants to risk of serious harm. This risk is exacerbated by the fact that the Tenant, as indicated in his evidence, and despite the determinations of the Fire

Commissioner, continues to maintain that he has done nothing wrong and that he is not responsible for any fire code violations.

### Credibility Concerns

We also note that there are substantial credibility concerns regarding the Tenant and the evidence that he and his witness have provided. Multiple tenants have expressed that the Tenant procured signatures under false pretenses (Landlord evidence pages 133 to 148). Multiple tenants indicated that the Tenant procured signatures for the purposes of a “going away card” and which were then used allegedly in support of continuing his tenancy. Multiple tenants have indicated that paragraphs supporting his tenancy were added to statements that they had signed. Multiple tenants have indicated that signatures of support given in 2019 were improperly used to support the Tenant’s in the 2021 proceedings.

The Tenant’s response is simply that these individuals are making this up. Interestingly, though, despite the Tenant’s position that these claims were all untrue, he was able to identify each individual who made a statement anonymously based on the information contained in their statements. This suggests that the information contained in these statements is accurate and the Tenant is lying.

Numerous statements provided by the Tenant and [L.R.] are undated and, accordingly, we cannot assess the evidentiary value or reliability of these statements.

### **Summary**

The forgoing facts and evidence indicate that the Landlord has cause to terminate the Tenant’s tenancy pursuant to ss. 47(1)(d) and 47(1)(e) of the Act.

Each of the instances of the Tenant’s conduct described above constitutes an example of the Tenant or a person permitted onto the Residence by the Tenant (i) significantly interfering with or unreasonably disturbing another occupant or the Landlord; (ii) seriously jeopardizing the health or safety or a lawful right or interest of the Landlord or another occupant; and (iii) putting the Landlord’s property at significant risk. We draw particular attention to the risks to safety and property posed by unauthorized access into the building, repeated breaches of

Covid-19 mandates during the heat of the pandemic, smoking in the Residence, multiple fire code violations, and engaging in fraudulent behaviour toward tenants.

Numerous instances of the Tenant's conduct described above also constitutes an example of the Tenant or a person permitted onto the Residence by the Tenant engaging in illegal activity that (i) has or is likely to cause damage to the Landlord's property; (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property; or (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the Landlord. Notable examples of this in the evidence include, but are not limited to, the Tenant's breach of fire code violations and Covid-19 mandates, as well as the abetting trespassers into the Residence.

Importantly, we also stress that the conduct of the Tenant's guests has been just as egregious. JB's actions on January 29, 2021, alone would likely justify termination the tenancy, as the evidence shows that JB propped a door open that, hours later, was entered by a thief to steal tenant property. The Tenant's position is that the door was never propped open, which is clearly rebutted by the evidence provided. The Residence is home to over 250 residents, and so the risks posed by the Tenant going forward affects many people (testimony of [resident building manager P.J.]).

The Tenant has received multiple warnings and notices, both posted throughout the Residence and sent to him directly, and opportunities to correct his behaviour, and yet his lack of concern for the well-being of his neighbours and the Landlord continues. We respectfully ask for relief from this untenable situation.

### Tenant's Closing Submissions

Pursuant to the Fourth Interim Decision, the tenant's advocate provided written closing submissions. Closing submissions for the tenant state in part:

On February 18, 2021, a One-Month Notice to evict CA was served to LR because CA's guest allegedly wedged a door open in the building, resulting in a trespasser entering 4 ½ hours later and stealing tenant property. (pages 54-56).

Immediately after LR received the One Month Notice to evict CA, PJ disconnected CA's entry phone and guests could no longer buzz CA to give them access to the building and elevator. This created a tremendous amount of havoc for CA, his guests, and other residents in the building. When CA's guests would try to buzz him, they would either connect to a Shaw Operator or try to find another way into the building and up to the fourth floor.

It is important to note, CA could not let anyone into the building or access to his floor unless they knew his cell phone number and could call him to come downstairs and let them in. When CA discovered this, he asked the building managers verbally and in writing to restore his entry phone services (pages 63, 153) but they ignored these requests. To date, his entry phone services are still disconnected (page 171, bottom). A landlord is not permitted to impose restrictions on guests and cannot stop a tenant from having guests under Schedule 9(1) and 9(2) of the Residential Tenancy Regulation (RTR) and cannot restrict services or facilities under Section 7 of the Residential Tenancy Act, as follows:

### **Occupants and guests**

**9** (1)The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.

(2)The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

(2.1)Despite subsection (2) of this section but subject to section 27 of the Act [*terminating or restricting services or facilities*], the landlord may impose reasonable restrictions on guests' use of common areas of the residential property.

(3)If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*.



### **Terminating or restricting services or facilities**

- 27** (1)A landlord must not terminate or restrict a service or facility if
- (a)the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
  - (b)providing the service or facility is a material term of the tenancy agreement.

From Feb 18- Mar 5, 2021, CA's entry phone was either partially connected or fully disconnected. If it was partially connected, it would connect to a Shaw Operator. If it was fully disconnected, it would connect to nothing and be completely inoperable. Please refer to the table below for clarity:

From	To	Disconnection Status
Feb 18, 2021	Feb 27, 2021	partially disconnected
Feb 28, 2021	Mar 01, 2021	fully disconnected
Mar 02, 2021	Mar 04, 2021	partially disconnected
Mar 05, 2021	Mar 25, 2022	fully disconnected

\*\* Arbitrator Hedrich ordered it be reconnected by Mar 25, 2022

As a result of the landlord's deliberate actions to restrict CA's services, residents in the building made complaints about CA's guests loitering and attempting to gain unauthorized access into the building (pages 67, 69, 71, 74, 76, 79, 89-90). The complaints from residents described CA's guests as "suspicious" people that were "loitering" and "breaching building security," "making them feel "unsafe." These complaints were used to draw a correlation between CA's guests and the mail theft incident on January 29, 2021. It was all very calculated.

Following the disconnection of the entry phone, the landlord restricted CA's FOB service on March 13, 2021, so he could no longer enter through the East and North doors (page 119) while other residents could still enter through these doors. Since CA's FOB was restricted, he discovered that if he exited from the North and/or East doors to have a cigarette he would be locked out. Therefore, when he went outside the east door to have a cigarette at 4:00 a.m. on March 13, 2021, he propped open the door for 5 minutes. In that short period of time, a resident noticed the door was ajar and removed the object from the door (page 118), locking CA out. CA had no choice but to walk around the building and enter

through the front lobby (page 120-121). The resident that found the door open informed the building managers.

The landlord has used the complaints resulting from restricting CA's FOB and entry phone services as the narrative to prove that CA and his guests are contravening sections 47(1)(d) and 47(1)(e) and therefore deserving of a One-Month Notice to End Tenancy for Cause. The problem with this was that all the evidence came after the One Month Notice was served on February 18, 2021.

The building managers were not only restricting CA's Entry phone and FOB services (pages 63, 67, 69- 71, 73- 75, 79, 80, 83, 88-90, 118-120, 133, 153-154, 171) but were denying him the right to have tenant insurance (pages 93-105, 112). They subjected him to routine inspections (pages 87, 93), fire inspections (pages 106-107), incident reports (pages 74, 93), noise complaints (pages 91- 92), multiple eviction notices (pages 28-29, 54-56, 113-120, 135-137) and general complaints (pages 77-78, 85, 161) that were all addressed to LR (but pertaining to CA) in an effort to bog him down and overwhelm him in a short period of time.

On March 5, 2021, after receiving an abundance of complaints, the landlord posted a Building Security Notice on everyone's door stating, in part, that "if you have had any items stolen including packages, or see suspicious people loitering, please report them to the authorities and inform building management" (page 81-82).

On May 5, 2021, MJ informed at least 25 tenants by email that CA was allegedly engaging in criminal activity in the building and using their signature from a petition in 2019 to support his behaviour. Tenants responded by withdrawing their signature (pages 121-122) because they did not want to support the purported criminal activity.

....

CA understands the importance of keeping his living area safe and would not do anything to jeopardize it. Several residents supported him in 2019 by signing a petition to prevent him from being evicted (pages 39-41) and others have written letters to vouch for his good character (pages 173-180).

The landlord has painted a rather elaborate story about CA, insinuating that he is a problematic tenant that is indirectly responsible for packages being stolen from the lobby. After reviewing the landlord's evidence carefully, it appears that many of the documents are exaggerated and/or circumstantial at best.

CA did recognize one of the individuals in a video still shot dated January 29, 2021, to be JB, who had just brought him his recycling. And, while it may be possible that the loading bay door was slightly open, it cannot be determined whether JB wedged it open or if it was simply not closing properly. It seems unlikely, however, that JB would deliberately wedge the door open since no photos were submitted to indicate he actually placed something in the door to keep it open. I have paid particular attention to the timestamps on these photos and found that at 6:06 a.m. a tenant who got off of the loading bay elevator noticed the door was open but did not close it (page 50 LLD pkg). Then at 6:37 a.m. (page 57 LLD pkg), someone was seen entering the building from the loading bay door, removing the packages from the front lobby (page 59-60 LLD pkg), departing through the front door at 6:38 a.m. (page 62 LLD pkg), then returning to enter through the loading bay door at 6:52 a.m. (page 62 LLD pkg) and departing through the front door with the dolly at 6:57 a.m. (page 70 LLD pkg). Because the landlord did not provide the uncut video footage from when JB left the building at 2:08 a.m. (page 49-50) to when the trespasser enters 4.5 hours later (page 57 LLD pkg), it is impossible to determine if JB is responsible for what happened or if there is another explanation. There is evidence to show that more than one building door was not closing properly (pages 62, 64-66).

If JB deliberately caused the incident on January 29, why was CA not informed about the incident prior to receiving an eviction notice almost 20 days later? Moreover, why was CA's first interaction with the police not until March 4, 2021, 35 days later? When the [police] notified him about the mail theft in the building CA told JB that he could no longer help him with his recycling and JB has not been in the building since (page 86). In addition, after CA learned that the doors in the building were not shutting properly, he made every effort to check that all building doors were closing behind him as he entered/exited the building.

While there is no doubt that someone did enter the premises at 2050 Scotia Street on January 29, 2021, for the purpose of stealing tenant mail and packages located in the front lobby, there is no evidence to support that CA is in any way was connected to that theft. And although it is unfortunate that the theft occurred,

it is more likely than not due to poor door maintenance and inadequate building security.

JB did not enter the building on January 29, 2021, with the intent to commit a crime, he simply wanted to take his recyclables to CA as he did on so many other occasions. JB did not know that the door behind him did not close or that there was a problem with that door closing properly. He did not see any signage directing him to pull or push the door shut to make sure that it was closing properly behind him. If such signage had existed, he would have certainly done so.

There is insufficient and inconclusive evidence to prove that CA or his guests have breached Sections 47(d) and 47(e) of the Residential Tenancy Act as indicated in Arbitrator Lee's Decision dated May 11, 2021 (pages 129). It has been over a year since the packages were stolen from the front lobby and CA and/or his guests have not been charged for a crime.

[The landlord] has attempted to evict CA three times in the last year (pages 54-56, 113-120, 135-137). These attempts are targeted and purely personal, which is evidenced by [the landlord's] actions to overwhelm and exhaust CA by:

1. Disconnecting his Entry phone
2. Impeding his guest's access
3. Performing multiple inspections
4. Disconnecting FOB access (N and E doors)
5. Interfering with his tenant insurance
6. Ignoring Orders (Estoppel / Res judicata)
7. General harassment (hazmat, smoking, noise, dog, etc.)

As the community surrounding [the subject rental building] is growing and becoming much more desirable, the neighbourhood is becoming a hotspot for hipsters and young adults. CA pays only \$1435.00 per month in rent, which is a fraction of the monthly rent that other tenants are typically paying. It is, therefore, more likely than not that the building managers are attempting to evict old tenants and replace them with new ones so they can raise the rent significantly.

CA wishes to reside in his long-term home for another 5-6 years and would like the landlords to stop harassing him. I, therefore, ask you to please cancel the One Month

Notice to End Tenancy for Cause dated May 18, 2021, and estop the landlord from continuing to abuse the RTB process in order to gentrify the neighbourhood.

### Analysis

Based on the testimony of both parties, I find that the tenant received the May Notice on May 19, 2021 via posting on the tenant's door. I find that the above service complies with section 88 of the *Act*.

Section 47(1)(d) and section 47(1)(e) of the *Act* state:

**47** (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d)the tenant or a person permitted on the residential property by the 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;

(e)the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- (i)has caused or is likely to cause damage to the landlord's property,
- (ii)has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- (iii)has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy. In this case, the landlord bears the burden to proof.

The advocate quoted findings made by another arbitrator in the May 11, 2021 decision which pertained to an emergency end to tenancy filed against L.R. at the subject rental property. I was not privy to the testimony heard or the evidence provided in the aforementioned hearing, and, pursuant to section 64(2) of the *Act*, I must make my decision on the merits of the case as disclosed by the evidence admitted and I am not bound to follow other decisions under this Part. In this decision, I have made findings based on the evidence presented by the parties and I decline to follow the findings made in the May 11, 2021 decision against L.R.

#### January 29, 2021 Incident

Upon careful review of the video stills taken on January 29, 2021 and entered into evidence by the landlord, and as agreed by both parties, I find that the tenant granted J.B. access to the subject rental building at approximately 1:31 a.m. As agreed by both parties, I find that J.B. was pulling a dolly with a box on it and took the box and dolly into the tenant's apartment. As agreed by both parties, I find that J.B. exited the tenant's apartment and returned to the lobby of the subject rental building with the dolly and the box at approximately 2:05 a.m. As seen in the video stills, I find that J.B. left the dolly by the front door and carried the box to the rear loading bay doors (two doors, only one handle).

I find that the still bearing the time 2:06:31 clearly shows the loading bay door completely closed as J.B. approaches it. In still 2:06:35 J.B. can be seen bending over the box directly in front of the hinges of the right most door. The doors can be seen to be closed.

The tenant's advocate submitted that upon review of the video stills, "it cannot be determined whether JB wedged it open or if it was simply not closing properly. It seems unlikely, however, that JB would deliberately wedge the door open since no photos were submitted to indicate he actually placed something in the door to keep it open." Respectfully, I do not agree with the advocate's above submissions. Upon review of the

video still bearing the time 2:06:59, a rectangular shaped object can be seen wedging the door open that was not seen in the previous video stills taken tenth of seconds earlier. I find, on a balance of probabilities, that JB intentionally wedged something in the loading bay doors to prevent the doors from closing.

Upon review of the video stills between 2:07:00 and 2:08:14, I find that J.B. carried the large cardboard box and placed it under the loading bay stairs. I note that the only other object that can be seen under the stairs is another flattened cardboard box. No other items that would indicate the space was used by homeless people on a regular or semi regular basis can be seen.

The tenant's advocate submitted "I have paid particular attention to the timestamps on these photos and found that at 6:06 a.m. a tenant who got off of the loading bay elevator noticed the door was open but did not close it". Respectfully, I do not agree with the above submissions. On review of the video still bearing the time 6:06 a.m., the person exiting the elevator is not looking to their left, where the loading bay doors are located, but their body is angled to the right, heading towards the lobby. I find that in the 6:06 a.m. video still, there is no evidence to support the advocate's submission that the person exiting the elevator noticed to loading bay door which remains held ajar by the item JB wedged in it at 2:06 a.m.

The tenant's advocate submitted that "Because the landlord did not provide the uncut video footage from when JB left the building at 2:08 a.m. (page 49-50) to when the trespasser enters 4.5 hours later (page 57 LLD pkg), it is impossible to determine if JB is responsible for what happened or if there is another explanation."

Resident building manager P.J. testified that he reviewed the video footage between 2:08 a.m. and 6:06 a.m. and that no other person appeared which is why video stills were not included between 2:08 a.m. and 6:06 a.m. I found resident building manager P.J.'s testimony to be straightforward, clear, consistent, and bore an air of reality. I find that resident building manager P.J.'s testimony was credible. I find, on a balance of probabilities, that between the time of 2:08 a.m. and 6:06 a.m., no other persons were seen in the security video.

Upon review of the security video stills, I find that a person wearing different clothes than J.B. was wearing between the hours of 1:30 a.m. and 2:08 a.m., ("person A"), entered the loading bay area at 6:31:45 a.m. At 6:32:06 a.m. person A walked directly to the area under the loading bay stairs and looked inside the box left by J.B. I find that at

6:33:04 a.m. person A then proceeded to open and look through the loading bay doors previously wedged open by J.B. and then at 6:33:45 a.m. person A retreated and walked away from the loading bay, only to return minutes later at 6:37:18 a.m. Person A is wearing the same clothes as the person who returned at 6:37:18 a.m., I find, on a balance of probabilities, that they are the same person as it is not likely that two people in that area at that time would be wearing the same clothes or that two people exchanged their clothes in the four-minute gap in the surveillance footage.

Upon review of the security video stills, I find that person A entered the subject rental building through the loading bay door at 6:37:33 a.m. and walked directly to the lobby where the mailboxes for the subject rental building are located, and where packages for the residence of the building had been delivered. Person A then picked up all the packages and proceeded to exit through the front door at 6:38:16 a.m.

Upon review of the security video stills, I find that person A, wearing the same clothes at 6:38:16 a.m. returned through the wedged open loading bay door at 6:52:59 a.m. and entered and exited the elevator between 6:53:26 a.m. and 6:53:46 a.m. I find, on a balance of probabilities, that person A who left at 6:38:16 a.m. is the same person who returned at 6:52:59 a.m. because the clothing and body style is the same. Person A then walked around the main floor before looking through unclaimed mail to the right of the mailboxes between 6:56:26 a.m. and 6:56:54 a.m. Person A then proceeded to walk over to the dolly left by J.B., and exited the building with the dolly at 6:57:05 a.m.

The tenant testified that he instructed J.B. to leave the dolly in the lobby as a gift for the building because he already had dollies and did not want J.B.'s dolly. I do not find this testimony to be credible. The tenant testified that J.B. is a homeless person who sells him recycling for his art. I find that if the above is true, then the dolly would be a useful item for J.B. to keep to aid him in transporting the recycled material to the tenant. I find it highly unlikely that J.B. would abandon the dolly, which in and of itself has value, with no intention of retrieving it. I find, on a balance of probabilities, that the dolly was left to aid in the theft of packages delivered to the lobby of the subject rental building. I find that the presence of both the intentionally wedged open door and the dolly left near the packages support the conclusion that J.B. wedged open the door deliberately to facilitate the theft of the packages.

The advocate submitted that the subject rental building had a history of malfunctioning doors and that it was therefore not J.B.'s fault that the loading bay door did not close behind him when he left the building. As I have already determined that J.B.



intentionally wedged open the doors, I find that the advocate's above argument is defunct. I find that the January 29, 2021 theft did not result from J.B.'s inadvertent failure to pull the doors closed, but from J.B.'s intentional wedging open of the doors.

I am not able to decisively conclude if the person A and J.B. are one and the same, but I find, on a balance of probabilities, that if person A is not J.B., then the two of them conspired to steal from the lobby of the subject rental building. I find that is strains credulity to suggest that person A and J.B. are unknown to each other, if they are separate people, given that person A looked into the same box left by J.B., entered through the same door wedged open by J.B. and left the subject rental building with the dolly left by J.B. I find, on a balance of probabilities, that J.B. either stole the packages or aided and abetted person A who stole the packages.

I note that the burden of proof required for criminal proceedings is substantially higher than the balance of probabilities required under the *Act*, which may be why criminal charges have not been laid.

The tenant testified that he is not responsible for his guests' actions once they leave the door to his apartment. I find that this statement is not supported by the law. Section 47(1)(d) and (e) of the *Act* clearly state that the landlord may end a tenancy by giving a notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant committed an offence under section 47(1)(d) or (e). Based on the tenant's testimony, I find that J.B. was the tenant's guest on January 29, 2021.

I find that in either stealing packages or aiding and abetting the theft of packages from the rental building, which is part of the tenant's residential property, J.B. seriously jeopardized the lawful right or interest of other occupants of the subject rental building, contrary to section 41(d)(ii) of the *Act*. I find that the other occupants of the subject rental building have a right to not have their packages stolen by guests of the tenant or associates of the tenant's guests. I find that theft constitutes a serious infringement of the rights of the occupants of the subject rental building. Pursuant to section 41(d)(ii) of the *Act*, I uphold the May Notice. Upon inspection of the May Notice, I find that it meets the form and content requirements set out in section 52 of the *Act*.

Section 55(1) of the *Act* states:

**55** (1) 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

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Pursuant to section 55(1) of the *Act* I grant the landlord a two-day Order of Possession because the landlord's notice complies with section 52 of the *Act* and because the May Notice was upheld. As I have determined that the landlord is entitled to an Order of Possession due to the January 29, 2021 incident, I decline to consider if the landlord is entitled to an Order of Possession for any other reason.

The advocate submitted that the tenant was served the May Notice because the landlord is attempting to evict old tenants so that new tenants paying higher rents may be found. After reviewing the events of January 29, 2021, I find that the landlord's motivations in serving the May Notice were validly based on the actions of the tenant's guest on January 29, 2021.

As the tenant was not successful in this application for dispute resolution, I find that the tenant is not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*. As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

### **Conclusion**

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant, and all other occupants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a Monetary Order to the landlord in the amount of \$100.00.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: March 30, 2022

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Residential Tenancy Branch