



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REGAL 80 MANAGEMENT CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

OPC, CNC, FFL

### **Introduction**

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession and to recover the fee for filing an Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel a One Month Notice to End Tenancy for Cause.

The Advocate for the Tenant stated that on December 08, 2021 the Tenant's Dispute Resolution Package and a copy of the One Month Notice to End Tenancy for Cause was sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The Agent for the Landlord stated that the Landlord's Dispute Resolution Package was personally served to the Tenant in 2021, although she does not know the date of service. The Tenant acknowledged receipt of these documents in 2021, although he also does not recall the date of receipt. As the Tenant received the documents in 2021, I find that they were sufficiently served to the Tenant pursuant to section 71(2)(c) of the *Residential Tenancy Act (Act)*.

The Agent for the Landlord stated that three videos and one letter were served to the Tenant, although she does not recall the date of service. The Tenant acknowledged

receipt of these documents, although he also does not recall the date of receipt. As the Tenant received the evidence and there was no evidence to suggest it was not served in a timely manner, I find that it was sufficiently served to the Tenant and it was accepted as evidence for these proceedings.

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

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

#### Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be set aside or should the Landlord be granted an Order of Possession?

#### Background and Evidence

The Agent for the Landlord and the Tenant agreed that this tenancy began approximately two years ago, there is no written tenancy agreement, and rent is due by the first day of each month.

The Agent for the Landlord stated that the One Month Notice to End Tenancy for Cause was personally served to the Tenant, although she does not recall the date of service. The Tenant stated that he found the One Month Notice to End Tenancy for Cause posted on the door of his rental unit on November 25, 2021.

The One Month Notice to End Tenancy for Cause that was submitted in evidence by the Tenant, which is dated November 24, 2021, declares that the rental unit must be vacated by December 24, 2021. The reasons for ending the tenancy cited on the One Month Notice to End Tenancy for Cause are that the Tenant or a person permitted on the property has engaged in illegal activity that has, or is likely to, damage the landlord's property and a security/pet damage deposit has not been paid within thirty days as required by the tenancy agreement.

On the bottom of the second page of the One Month Notice to End Tenancy for Cause, the Landlord informs the Tenant that the tenancy is ending, in part, because the Tenant has “taken” the Landlord’s fridge without permission.

The Agent for the Landlord and the Tenant agree that the video evidence submitted by the Landlord shows the Tenant moving a refrigerator.

In regard to the refrigerator the Agent for the Landlord stated that:

- She is not sure when the Tenant moved the refrigerator;
- The refrigerator belongs to the Landlord;
- The refrigerator was being stored on the first floor of the residential complex until it could be delivered to another rental unit in the complex;
- The Tenant moved the refrigerator to the second floor;
- After being confronted by the Landlord’s employee, the Tenant left the refrigerator on the second floor; and
- There is a police file number on record, so she presumes the incident was reported to the police.

In regard to the refrigerator the Tenant stated that:

- He moved the refrigerator from the first floor to the second floor, where he lives;
- He moved it to the second floor because he intended to ask the Landlord if he could purchase the refrigerator;
- He did not intend to move the refrigerator into his room until the Landlord agreed he could purchase it;
- He was unable to speak to anyone about purchasing the refrigerator prior to moving it because nobody was in the office when he decided to move the refrigerator;
- He does not recall anyone speaking to him about moving the refrigerator;
- If anyone spoke to him about moving the refrigerator, he could not hear them because of the noise he was making with the dolly;
- If anyone spoke to him about moving the refrigerator, he could not see them because he was behind the refrigerator;
- He was not aware that the Landlord believed he was stealing the refrigerator until the following day when he was served with the One Month Notice to End Tenancy for Cause (November 25, 2021); and
- The police did not speak with him about this incident.

The Advocate for the Tenant notes that the fridge was moved carefully with the aid of a dolly and was not damaged in any way.

The Landlord submitted a letter from an employee of the Landlord, in which the Landlord declared, in part, that:

- She told the Tenant he could not take the refrigerator;
- He responded to her initial comments with something not relevant to the conversation;
- He told her to mind her own business; and
- When she told the Tenant she was going to phone the police he told her to “go ahead call the cops”.

The Tenant denied having the conversation outlined in the letter from the employee. He stated that she did not even know she was there.

The Agent for the Landlord stated that the female seen in one of the videos submitted by the Landlord is the employee who wrote the aforementioned letter.

The Agent for the Landlord and the Tenant agree that the Tenant has two cats and that he has not paid a pet damage deposit.

The Agent for the Landlord stated that sometime in November of 2021 the Landlord asked the Tenant to pay a pet damage deposit. The Tenant stated that he was never asked to pay a pet damage deposit.

### Analysis

Section 47(1)(e) of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy if 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.

Section 47(1)(a) of the *Act* authorizes a landlord to end a tenancy if the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement.

On the basis of the evidence before me, I find that the Tenant was served with a One Month Notice to End Tenancy for Cause which declared the tenancy was ending pursuant to sections 47(1)(a) and 47(1)(e)(i) of the *Act*.

As the Tenant acknowledged receiving the One Month Notice to End Tenancy for Cause on November 25, 2021, I find that it was sufficiently served to him on that date, pursuant to section 71(2)(b) of the *Act*.

On the basis of the undisputed evidence, I find that the Tenant used a dolly to move a refrigerator that belonged to the Landlord. Even if I concluded that the Tenant was attempting to steal the refrigerator, I could not conclude that the Tenant was moving the refrigerator in a manner that damaged the refrigerator. Rather, the video evidence shows that the Tenant was carefully moving the refrigerator with a dolly. I therefore cannot conclude that the Landlord has established that the Tenant engaged in illegal activity that caused or was likely to cause damage to the landlord's property, which is grounds to end the tenancy pursuant to section 47(1)(e)(i) of the *Act*.

In the event the Landlord wished to end the tenancy because the Tenant stole, or was attempting to steal, a refrigerator, the Landlord should have declared on the Notice to End Tenancy that the tenancy was ending because the Tenant engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord, pursuant to section 47(1)(e)(iii) of the *Act*.

I find that the Tenant knew, or should have known, that the Landlord was attempting to end this tenancy, in part, because the Tenant had taken a refrigerator that belongs to the Landlord. I find that the Landlord has very clearly informed the Tenant that this is one of the reasons for ending the tenancy, as that information is provided on the bottom of the second page of the One Month Notice to End Tenancy for Cause.

I therefore amend the One Month Notice to End Tenancy for Cause, pursuant to section 68(1) of the *Act*, to show that the tenancy is ending pursuant to section 47(1)(e)(iii) of the *Act*. I find it is reasonable to amend the One Month Notice to End Tenancy for Cause as the Tenant testified that he understood he was being accused of stealing the refrigerator on the day he was served the One Month Notice to End Tenancy for Cause.

and he should, therefore, have been prepared to respond to this allegation. It is clear from the Tenant's testimony at the hearing that he was prepared to respond to this allegation.

On the basis of the undisputed evidence, I find that on November 24, 2021, which is the day before the Tenant was served with this One Month Notice to End Tenancy for Cause, the Tenant moved a refrigerator belonging to the Landlord from the lower level of the residential complex to the second floor of the complex, which is where the Tenant lives.

On the basis of the video and documentary evidence submitted by the Landlord, I find that the Tenant was intending to take the refrigerator. I therefore find, on the balance of probabilities, that the Tenant was attempting to take the refrigerator without lawful authority and that, in doing so, he committed theft.

Section 322(1) of the *Criminal Code* reads:

**322** (1) Every one commits theft who fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent

- (a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it;
- (b) to pledge it or deposit it as security;
- (c) to part with it under a condition with respect to its return that the person who parts with it may be unable to perform; or
- (d) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time it was taken or converted.

Section 322(2) of the *Criminal Code* reads:

(2) A person commits theft when, **with intent to steal anything, he moves it or causes it to move or to be moved, or begins to cause it to become movable.** (Emphasis added)

I find the Tenant's testimony that he intended to ask the Landlord if he could purchase the refrigerator after moving it to the second floor lacks credibility. I find it highly unlikely that an individual would make the effort of moving such a heavy item to the second floor

without any indication from the owner of the refrigerator that the item is for sale. I find it more likely that the Tenant was intending to steal the refrigerator.

I find the Tenant's testimony that he did not hear the Landlord's employee tell him to leave the refrigerator lacks credibility, in part, because in her written submission the employee says the Tenant responded to her comments by telling her to mind her own business and that she should "call the cops". I find his testimony also lacks credibility, in part, because although a refrigerator being moved upstairs with the use of a dolly makes noise, I find it unlikely that the noise level would completely block a conversation.

I find the Tenant's testimony that he was not aware of the Landlord's employee telling him to leave the refrigerator because his sight was blocked by the refrigerator also lacks credibility. I find this lacks credibility because the video evidence taken before the Tenant reaches the stairs shows that, at least some of the time, the Tenant is able to look over and around the refrigerator. I find it highly likely that he would be unable to see over the fridge while he was moving it up the stairs, as he would be above the fridge when it was on the stairs.

I find the Tenant's testimony that he was not aware of the Landlord's employee telling him to leave the refrigerator lacks credibility, in part, because of the video evidence submitted by the Landlord. Although I cannot hear what the employee is saying to the Tenant, the employee is quite animated in the video and she follows him up the stairs, which makes it extremely difficult to believe the Tenant would not have been aware of her presence.

After considering the evidence in its totality, I find, on the balance of probabilities, that the Tenant intended to move the refrigerator into the rental unit, without lawful authority, and that he did not move it into his rental unit because he had been confronted by the Landlord's employee. I therefore find that the Landlord has grounds to end this tenancy, pursuant to section 47(1)(e)(iii) of the *Act*.

As the Landlord has grounds to end this tenancy pursuant to section 47(1)(e)(iii) of the *Act*, I dismiss the Tenant's application to cancel the One Month Notice to End Tenancy for Cause and I grant the Landlord's application for an Order of Possession.

Even if I accepted the Agent for the Landlord's testimony that in November of 2021 the Tenant was asked to pay a pet damage deposit for his cats, I would conclude that the Landlord did not have the right to end this tenancy on November 24, 2021 pursuant to

section 47(1)(a) of the *Act*. This section only authorizes a landlord to end a tenancy if the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement. As the Landlord submits the request to pay a pet damage deposit was made sometime in November of 2021, the Landlord would have to wait until sometime in December of 2021 before attempting to end the tenancy for failing to pay the pet damage deposit.

I find the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to \$100.00 in compensation for fee paid to file an Application for Dispute Resolution.

### Conclusion

I grant the Landlord an Order of Possession that is effective on March 31, 2022. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I grant the Landlord a monetary Order in the amount of \$100.00, as compensation for fee paid to file this Application for Dispute Resolution. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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 21, 2022

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Residential Tenancy Branch