



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes CNC-MT, LRE, FFT

#### Introduction

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 for Cause (the "**Notice**") pursuant to section 47;
- more time to make an application to cancel the Notice pursuant to section 66;
- an order to suspend or set conditions on the landlords' right to enter the rental unit pursuant to section 70;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:50 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord testified she received the notice of dispute resolution form and supporting evidence package on January 13, 2022. The landlord testified she served her evidence package to the tenant on February 27, 2022 confirmed by the witness testimony. Based on the evidence before me, I am satisfied the landlord was served with the notice of dispute resolution and the tenant was served with the respondent's evidence pursuant to sections 89 and 90 of the Act.

I note s. 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession, and/ or a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

At the outset, I advised the landlord of rule 6.11 of the Residential Tenancy Branch (the "**RTB**") Rules of Procedure (the "**Rules**"), which prohibits participants from recording the hearing. The landlord confirmed that she was not recording the hearing. I also advised the landlord that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

This hearing was conducted in the absence of the tenant pursuant to rule 7.3 of the Rules.

**Issues to be Decided**

Is the tenant entitled to:

- 1) an order cancelling the Notice;
- 2) more time to make an application;
- 3) an order to suspend or set conditions on the landlords' right to enter the rental unit;
- 4) recover the filing fee?

If the tenant is unsuccessful in his application, is the landlord entitled to:

- 1) an order of possession?

**Background and Evidence**

The landlord gave the following undisputed testimony. Tenancy began in July of 2015. Rent is currently set at \$700.00 per month and includes utilities. The rental unit is a fully self-contained cabin located on the landlord's property. The landlord resides in the main residence on the property.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause in July of 2021, which was disputed by the tenant. A hearing was scheduled for late November 2021. The tenant did not attend the hearing and the arbitrator dismissed the tenant's application with leave to reapply. This file number for the previous hearing is recorded on the cover page of this decision.

The landlord subsequently filed an application pursuant to the Act s. 56 for an early end to tenancy because the tenant posed an immediate and severe risk to the rental property, other occupants or the landlord. The arbitrator was not satisfied there was an imminent danger to the health, safety, or security of a landlord or tenant that would cause him to end the tenancy early pursuant to the Act s. 56. The application was dismissed without leave to reapply. This file number for the previous hearing is recorded on the cover page of this decision.

The tenant subsequently started an application for dispute resolution on December 2, 2021 which was deemed abandoned December 29, 2021 by the RTB. This file number is recorded on the cover page of this decision.

The landlord testified she issued the One Month Notice to the tenant because the tenant is repeatedly late paying his rent and he "significantly interfered with or unreasonably disturbed another occupant or the landlord".

The landlord testified that there has been long-standing excessive noise issues. The landlord states she does not like conflict and tried to resolve the matter, first by speaking with the tenant directly, texting him, and when that did not work, she issued a written warning letter on July 11, 2021.

The landlord provided examples of excessive noise. On April 3, 2021 at 2309 and again at 0032, the landlord asked the tenant via text to please turn down his music because it was keeping her up. On July 2, 2021 he played music until 0500 keeping the landlord and her guest up. She had to cancel her plans that day because she was too tired from lack of sleep. On July 11, 2021 after receiving the letter from the landlord the tenant 'blasted music" from 10:45 through 11:15. Subsequent to the notice, the tenant engaged in a series of behaviors from talking loudly outside the landlord's bedroom window, to blasting a violent movie so loudly it could be heard over and above the landlord's television, to using an air rifle.

The landlord also provided a list of late rent payments and the accompanying receipts. Late payment dates dated back to 2018. Between 2018 and September 2020, the late payments were sporadic. In 2021, late payments were recorded for April, May, June and October.

The landlord is requesting an order of possession.

### **Analysis**

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

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.

When a tenant disputes a notice to end tenancy for cause, the landlord bears the onus to prove that the reason for ending tenancy. In this case, however, the tenant filed an application for dispute resolution requesting more time to make an application to cancel the notice; therefore, the onus to prove his case shifts to the person making the claim.

Section 66 of the Act sets out the circumstances in which an arbitrator can extend time limits established by the Act:

- (1) the director may extend a time limit established by the Act only in exceptional circumstances, other than as provided by s. 59(3) or 81(4).
- (2) Despite subsection (1), the director may extend the time limit established by s. 46(4)(a) for a tenant to pay overdue rent only in one of the following circumstances:
  - a. The extension is agreed to by the landlord;

- b. The tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.
- (3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

The tenant failed to appear to advance submissions in support of his application for more time to file. Accordingly, the tenant's application for an extension of time is dismissed without leave to reapply.

Rule 7.4 "Evidence must be presented" reads "Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submission supplied may or may not be considered". The tenant did not attend this hearing or any of the previous hearings. Pursuant to Rule 7.4 I have not considered the evidence submitted by the tenant.

As the tenant failed to appear at this hearing, I dismiss his application in full including: cancellation of the One Month Notice; the request for more time to make an application; to set conditions on the landlord's right to enter; and to recover the filing fee.

I now turn my mind to the form and content of the One Month Notice signed and dated July 12, 2021. To be of force and effect, the One Months' Notice must meet the formal requirements of s. 52 of the Act. On my review, the One-Month Notice complies with the s. 52 requirements on form and content.

Pursuant to the Act s. 55, where an arbitrator dismisses a tenant's application or upholds the landlord's notice and the landlord makes an oral request for an order of possession at the hearing, an arbitrator must grant the landlord an order for possession. As the tenant's application is dismissed and the landlord made an oral request for an order of possession, I am obligated by the Act to grant the landlord an order of possession.

I uphold the One Month Notice issued July 12, 2021, with an effective date of August 31, 2021. I grant the landlord an order of possession effective two (2) days of being served with a copy of the decision and attached order.

### **Conclusion**

The tenant's application is dismissed in its entirety without leave to reapply.

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s). Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 30, 2022

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Residential Tenancy Branch