



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Code      **CNC**

### Introduction

This hearing was reconvened as a result of the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of a One Month Notice to End Tenancy for Cause dated September 27, 2021, pursuant to section 47 of the Act.

The original hearing of this application was held on February 8, 2022 ("Original Hearing"). There was insufficient time to take the Tenant's testimony and allow rebuttals at the Original Hearing. Pursuant to Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") I adjourned the hearing and issued a decision dated February 11, 2022 ("Interim Decision"). The Interim Decision stated that Landlord and Tenant were not permitted to serve each other or file any additional evidence with the Residential Tenancy Branch ("RTB"). The Interim Decision, and Notices of Dispute Resolution Proceeding for this adjourned hearing, scheduled for March 7, 2022 at 9:30 am, were served on the parties by the RTB.

The Landlord and Tenant attended the Original Hearing and this adjourned hearing. They were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses at the Original Hearing and this hearing.

The Tenant testified the Notice of Dispute Resolution Proceeding ("NDRP") for the Original Hearing was served on the Landlord by email on October 6, 2021. The Landlord acknowledged receipt of the NDRP. An Address of Service on Form RTB-51 dated September 17, 2021, that allows the Landlord and Tenant to serve each other by email, was entered into evidence. I find the NDRP was served on the Landlord by the Tenant pursuant to section 89(2)(f) of the Act.

The Landlord stated he served the Tenant with his evidence for the Original Hearing by registered mail on January 26, 2022. The Landlord submitted a copy of the receipt and

the tracking number to corroborate his testimony that his evidence was served on the Tenant. I find the Landlord's evidence was served on the Tenant pursuant to section 88 of the Act.

### Issues to be Decided

- Is the Tenant entitled to cancellation of the 1 Month Notice?
- If the Tenant is not entitled to cancellation of the 1 Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenant's application and my findings are set out below.

The parties agreed the tenancy commenced on December 1, 2018, for a fixed term ending December 1, 2019, and then continued on a month-to-month basis, with rent of \$500.00 on the 1<sup>st</sup> day of each month and the rent is up to date. The Landlord stated the Tenant was not required to pay a security or pet damage deposit.

The Landlord stated the 1 Month Notice was served on the Tenant by email on September 27, 2021. An Address of Service on Form RTB-51 dated September 17, 2021, that allows the Landlord and Tenant to serve each other by email, was entered into evidence.

The 1 Month Notice stated the causes for ending the tenancy were the Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The 1 Month Notice provided lengthy details of the events giving rise to the causes for ending the tenancy stated in the 1 Month Notice.

The Landlord testified he is the registered owner of one parcel of land ("Property") on which there are two rental units. The two rental units are separated from each other by a gravel road ("Public Road"). The Landlord stated the Public Road is built on a public right of way ("Right of Way") that is registered on title to the Property. The Landlord stated the Regional District pays an independent contractor to maintain the Public Road. The Landlord stated he owns and rents a mobile home ("Tenant's Rental Unit") to the Tenant located on one side of the Public Road and he rents another rental unit ("Neighbour's Rental Unit") that is occupied by KS, his wife and his son (collectively the "Neighbours") on the other side of the Road.

The Landlord stated, that prior to July 2019, the Tenant and the Neighbours shared a common area ("Common Area") on the Neighbours' side of the Public Road, where the water supply for the Tenant and Neighbours is located.

The Landlord stated he has received complaints from KS, starting after July 29, 2019, regarding incidents that the Landlord stated significantly interfered with or unreasonably disturbed the Neighbours and seriously jeopardized the health or safety or lawful right of the Neighbours.

The Landlord stated KS advised him that an incident ("Initial Incident") occurred on or about July 29, 2019 in which the Tenant, while the Tenant was in his rental unit, exposed himself to the KS's wife and child. The Landlord stated that, as a result of the Initial Incident, the Landlord and KS entered into an agreement ("Water Maintenance Agreement") whereby KS would maintain the water supply for the Tenant's Rental Unit and the Neighbours' Rental Unit from July 2019 onwards. As a result of the Water Maintenance Agreement, the Tenant no longer has access to the Common Area after July 2019.

The Landlord provided dates and details of subsequent incidents, occurring after July 29, 2019 ("Subsequent Incidents") involving the Tenant that the Landlord had received complaints from KS. The Landlord stated the Tenant has not, before or after the Initial Incident, jeopardized his health, safety or lawful right of the Landlord.

The Tenant testified to the circumstances surrounding the Initial and Subsequent Incidents. I have not summarized all of the evidence provided by the Landlord and Tenant regarding Subsequent Incidents for the reasons stated below.

## Analysis

I accept the Landlord's and Tenant's evidence in its entirety.

The 1 Month Notice was served by the Landlord on the Tenant by email on in-person on September 27, 2021. Pursuant to section 44 of the *Residential Tenancy Regulation*, the Tenant was deemed to have received the 1 Month Notice of September 30, 2021. Pursuant to section 47(4) of the Act, the Tenant had 10 days to make an application for dispute resolution to dispute the 1 Month Notice. The records of the RTB disclose the Tenant made his application on September 28, 2021. Accordingly, the Tenant made his application to dispute the 1 Month Notice within the 10-day dispute period required by section 47(4) of the Act.

Section 47 of the Act states in part:

- 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
- [...]

- (2) A notice under this section must end the tenancy effective on a date that is
  - (a) not earlier than one month after the date the notice is received, and
  - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].
- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
  - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit by that date.

[emphasis in italics added]

Subsection 47(1)(d) specifically requires the tenant or a person permitted on the “residential property” has (i) significantly interfered with or unreasonably disturbed another occupant or the landlord; or (ii) seriously jeopardized the health or safety or lawful right or interest of the landlord or another occupant.

Section 1 of the Act defines “residential property” as:

**“residential property”** means

- (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
- (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
- (c) the rental unit and common areas, and
- (d) any other structure located on the parcel or parcels;

Prior to implementation of the Water Maintenance Agreement, the Tenant and Neighbours shared the Common Area. As the parties shared the Common area, I find that prior to implementation of the Water Maintenance Agreement, the Tenant’s Rental Unit and Neighbours’ Rental Unit were located on the same residential property. As such, the Tenant may have significantly disturbed or interfered with the Neighbours or significantly jeopardized the health, safety or lawful right of the Neighbours of as result of the Initial Incident. However, the Landlord did not serve the Tenant with a One Month Notice for Cause at that time to seek an end to the tenancy based on the Initial Incident. As such, I find that, due to the remoteness of time of the Initial Incident, to the date when the Landlord served the Tenant with the 1 Month Notice, the Landlord is now estopped from claiming cause to end the tenancy pursuant to subsections 47(1)(d)(i) or 47(1)(d)(ii) of the Act.

After the implementation of the Water Maintenance Agreement, the Tenant and Neighbours no longer share any Common Property. As such, I find that, after July 2019, the Tenant's Rental Unit and Neighbours' Rental Unit are no longer located on the same "residential property" as that term is defined in section 1 of the Act. The Landlord testified to, and submitted evidence, regarding the Subsequent Incidents. Subsections 47(1)(d)(i) and 47(1)(d)(ii) of the Act require a tenant to have (i) significantly disturbed or interfered with the landlord of the residential property or another occupant or (ii) to have significantly jeopardized the health, safety or lawful right of the landlord or another occupant of the same property. As the Tenant's Rental Unit and Neighbours' Rental Unit were not located on the same residential property when the Subsequent Incidents occurred, the Landlord has failed to establish cause to end the tenancy under subsections 47(1)(d)(i) or 47(1)(d)(ii) of the Act.

Based on the above, I find that none of the causes listed in the 1 Month Notice are valid. I find that the Tenant is entitled to cancellation of the 1 Month Notice. The tenancy continues until ended in accordance with the Act.

### Conclusion

The Notice is cancelled and the tenancy continues until ended in accordance with the Act.

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: April 4, 2022

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Residential Tenancy Branch