



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OLC, CNC, FFT**

### Introduction

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

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act;
2. An Order for the Landlord to comply with the Act, regulations and tenancy agreement pursuant to Section 62(3) of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, OM, two Supports, SM and NPS, and the Tenant, JD, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenant with the One Month Notice on December 14, 2021 by placing the notice on a table just outside the Tenant's door. The Tenant confirmed receipt of the One Month Notice. I find that the One Month Notice was deemed served on December 17, 2021 according to Sections 88(g) and 90(c) of the Act.

The Landlord testified that she served the Tenant with the Landlord's evidence package in two Canada Post registered mail packages on March 12, 2022 and March 17, 2022.

The Landlord referred me to two Canada Post tracking numbers as evidence of proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. The Landlord also testified that she left evidence packages at the Tenant's door on March 28, 2022. The Tenant confirmed receipt of the Landlord's evidence packages, one by registered mail, and one left at her door. I find that the Tenant was deemed served with the Landlord's evidence package sent by registered mail on March 17, 2022 in accordance with Sections 88(d) and 90(a) of the Act. I also find that the Tenant was deemed served with the Landlord's evidence package left at the Tenant's door on March 31, 2022 in accordance with Sections 88(g) and 90(c) of the Act.

The Tenant testified that she served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on December 29, 2021 by Canada Post registered mail (the "NoDRP package"). The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the NoDRP package on January 4, 2022. I find that the Landlord was served with the NoDRP package on January 4, 2022 in accordance with Section 89(1)(c) of the Act.

The Tenant served the Landlord with her evidence package on March 11, 2022 by leaving the package in a conspicuous place at the Landlord's front door. The Landlord confirmed receipt of the Tenant's evidence package. I find that the Tenant's evidence package was deemed served on March 14, 2022 according to Sections 88(g) and 90(c) of the Act.

### Issues to be Decided

1. Is the Tenant entitled to a cancellation of the Landlord's One Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to an Order for the Landlord to comply with the Act, regulations and tenancy agreement?
4. Is the Tenant entitled to a recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on August 1, 2021. The fixed term ended on January 31, 2022, then the tenancy continued on a month-to-month basis. Monthly rent is \$1,500.00 payable on the first day of each month. A security deposit of \$750.00 and a pet damage deposit of \$325.00 were collected at the start of the tenancy and are still held by the Landlord.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenant has seriously jeopardized the health or safety or lawful right of the Landlord. The effective date of the One Month Notice was January 31, 2022. The Landlord provided additional details of the cause which follow:

*Prior to move-in Aug 01/21 I [Landlord] indicated concerns to [the Tenant] (tenant) around the use of unscented products as I am very sensitive to fragrance. Have written four letters requesting [the Tenant] to stop using scents in the house as these scents are causing me mental & health issues (Can provide copies dated Aug 27/21, Aug 28/21, Dec 03/21, Dec 07/21, Dec 14/21. Have also given [Tenant] (tenant) documentation from my doctor as well as my sisters diagnosis indicating Medical Chemical Sensitivities is a medical condition that runs in the family (given to [Tenant] Dec 01/21)(Can provide copies) The letter from my doctor says it is "imperative that she avoids unnecessary exposure to environmental fragrances & chemicals". The pervasive exposure to the use of fragrance has been overwhelming and the tenant [Tenant's name] has continued to use fragrance that permeates throughout the entire house. Exposure to fragrance in my own house on an ongoing basis when I have sensitivities is not conducive to my well being.*

The Landlord testified that she has fragrance sensitivities, and the fragrance odours from the Tenant's rental unit have worsened the Landlord's condition. The Landlord engaged in detailed noting of days in her home where she was affected by fragrance from the downstairs rental unit beginning September 25, 2021 to March 7, 2022. Aside from the letters written in August 2021 and December 2021 which include some detail of her chemical sensitivities, the Landlord uploaded receipts of purchases for cleaning products that the Landlord would like the Tenant to use as opposed to bleach and Mr. Clean which she wrote she saw the Tenant bring into her suite.

The Landlord also uploaded a doctor's letter about the Landlord's condition. It reads:

November 26, 2021

*To Whom It May Concern:*

*[Landlord] is a patient of our clinic battling with recent onset chemical sensitivities. Multiple Chemical Sensitivities is a medical condition that runs in her family*

*She is in the process of being worked up for this medical condition. It is imperative that she avoids unnecessary exposure to environmental fragrances and chemicals*

*I would appreciate the support of her friends and acquaintances complying with this as she is worked up further*

Although the Tenant asked for the Landlord's permission to do a sage cleanse and the Landlord told her she was fine with it because it was natural, the Landlord testified that the smoke from the Tenant's sage stick, which she said goes on for hours and hours, and is intensified because the Tenant does not open her windows, is bothersome. She can see a cloud of smoke in her upstairs unit and she smells the smoke. The Landlord offered this Tenant \$3,000.00 cash for a mutual agreement to end this tenancy. For the Landlord, the scents are an on-going issue which she stated is life threatening for her.

The Tenant wrote that she works 12 hour shifts, two days and two nights, so she works and sleeps for four days. She notes, "*In [the Landlord's] running diary of my perceived transgressions, there are simply untruths and assumptions. Several of the dates, especially at the beginning of her documentation (pretty much as soon as I moved in) I wasn't even home, when I compared them to my work schedule.*"

The Tenant testified that at the beginning of the tenancy, the Landlord only disclosed that her sister was sensitive to fragrances. The Tenant pointed to the fact that the Landlord added in a handwritten note in the uploaded tenancy agreement on page six stating "unscented laundry, dish and candles" which was not included in the original signed agreement.

The Tenant submitted into her documentary evidence that when doing the first inspection of the rental unit, there was a really strong musty odour in the bedroom. She said, "*I wondered if there had previously been a water leak, hence the warping in the floor in the bedroom by the closet, as well as in the living room and kitchen.*" The Tenant

wrote that the Landlord told her she previously had this assessed and that it was nothing.

The Tenant's evidence was that she has changed her routine for the Landlord. The Tenant determined the Landlord found out the products she used by going through the recycling. Now, she does not put on scented products, she has used cleaners that the Landlord has brought her, and she changed the laundry products she used. The Tenant disclosed that she found an atomizer in the recycling bin containing rose scented essential oils. She said, "*I hate to be 'that guy'... but if that is being used upstairs by [the Landlord], yes, I could see how that could be quite strong.*" The Tenant stated that the Landlord still smells whatever she uses, even those products the Landlord has bought for the Tenant.

The Tenant testified that all these difficulties could have been avoided if the Landlord was truthful from the beginning. The Tenant described that she has put in applications to co-operatives which some of her friends live in. She said this is not an enjoyable tenancy, she is a face-to-face person, but the Tenant said she cannot have an adult conversation with this Landlord.

### Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47 of the Act is the relevant section of the legislation for this matter. It states:

#### ***Landlord's notice: cause***

**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*

...

- (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.*

...

The Tenant was deemed served with the One Month Notice on December 17, 2021. The Tenant applied for dispute resolution on December 24, 2021 within the 10 days after the date the Tenant received the One Month Notice. I find the Landlord's One Month Notice complies with the form and content requirements of Section 52 of the Act.

The Landlord expressed that she is hypersensitive to chemical and fragrance odours. She testified that early in the tenancy, she told the Tenant that this is a serious issue for her and she bought unscented cleaning products for the Tenant to use in maintaining her home. The Tenant stated the Landlord was not upfront with this information before the tenancy began, other than to tell the Tenant that the Landlord's sister had a sensitivity to odours from certain products and that she visited once per month. In an inspection of the rental unit, the Tenant alerted the Landlord to a strong musty odour in the bedroom and warping of the floor by the closet in the bedroom, living room and kitchen. The Tenant wrote the Landlord told her she had it looked at and it was nothing. The Tenant's sage cleansing smoke is bothersome for the Landlord, and the Landlord said it goes on for hours and hours.

This Landlord is extremely sensitive to chemical and fragrance odours. She smells them even from products she has bought for the Tenant to use in doing her laundry. I find this

is causing the Landlord serious health issues, although it is not life-threatening. Nonetheless, the Landlord's complaint about her smell sensitivities is overwhelming. I find on a balance of probabilities that the situation of this tenancy is in such a poor state, the Landlord's health is so adversely impacted, that the Landlord has proven her claim and I dismiss the Tenant's application to cancel the Landlord's One Month Notice.

As the Tenant failed in her application, I must consider if the Landlord is entitled to an Order of Possession. Section 55(1) of the Act reads as follows:

***Order of possession for the landlord***

- 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.*

I previously found that the One Month Notice submitted into documentary evidence complies with Section 52 of the Act. Based on the testimonies of both parties, I order that the Tenant's application for dispute resolution to cancel the One Month Notice is dismissed without leave to re-apply. I uphold the Landlord's One Month Notice and grant an Order of Possession to the Landlord which will be effective on April 30, 2022 at 1:00 p.m.

**Conclusion**

The Tenant's application for dispute resolution is dismissed, and the Landlord is granted an Order of Possession, which will be effective on April 30, 2022 at 1:00 p.m. The Order

of Possession may be filed in and enforced as an Order of the British Columbia Supreme 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 Act.

Dated: April 09, 2022

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Residential Tenancy Branch