



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, LRE, RP, PSF, LAT, OLC, MNDCT, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47;
- an order to restrict or suspend the landlord's right of entry, under section 70;
- an order requiring the landlord to carry out repairs, pursuant to section 32;
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62;
- an order of authorization to change the lock, pursuant to sections 31 and 70;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72

Both parties attended the hearing. The landlord was assisted by counsel WW (the landlord) and law student KZ. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application, the amendments and evidence (the materials). Based on the

testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

### Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

### Issues to be Decided

Is the tenant entitled to:

1. Cancellation of the Notice?
2. An authorization to recover the filing fee?
3. If the tenant's application is dismissed, are the landlords entitled to an order of possession?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

Both parties agreed the tenancy started in June 2020. Monthly rent is \$1,300.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$650.00 and a pet damage deposit of \$650.00 were collected and the landlords hold them in trust. The tenancy agreement was submitted into evidence.

The amendment submitted by the tenant indicates the tenant received the Notice on January 14, 2022.

The landlord affirmed she email the Notice on January 14, 2022 and sent it via registered mail on the same date.

The tenant confirmed three times that she received the Notice on January 14, 2022. The tenant submitted this application on January 25, 2022 and continues to occupy the rental unit.

The Notice was submitted into evidence. It is dated January 14, 2022 and the effective date is February 28, 2022.

The reason to end the tenancy is: "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

The details of the cause are:

Landlord and the tenant signed a one-year fixed lease agreement in May 2020 to move out before date of May 31.2021. This way by mutual agreement and signed a written consent. Landlord served the Notice to quit to tenant on May 09<sup>th</sup> and August 30<sup>th</sup> 2021 via email. Text message and posted on the door until today the tenant still occupy the unit and has no sign to move out.

### Analysis

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct and sufficient cause to end the tenancy.

Based on the tenant's convincing testimony and the amendment, I find the tenant received the Notice on January 14, 2022.

Section 47(4) and (5) of the Act states:

(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.

I find the tenant disputed the Notice after the ten-day deadline, as the tenant received the Notice on January 14, 2022 and disputed it on Tuesday, January 25, 2022.

I find the Notice is in accordance with section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the effective date, the ground to end tenancy and it is in the approved form.

Based on the above, I find the tenancy ended on February 28, 2022, per section 44(1)(a)(iii) of the Act. I dismiss the tenant's application to cancel the January 14, 2022 Notice and award the landlords an order of possession, per section 55(1) of the Act.

After I rendered my oral decision the tenant affirmed she may have received the Notice on January 15, 2022. I find the prior testimony offered by the tenant was convincing and I did not change my decision.

The tenant must bear the cost of the filing fee, as the tenant was not successful.

### Conclusion

Pursuant to section 55(1) of the Act, I grant an order of possession to the landlords effective two days after service of this order on the tenant. 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: April 26, 2022

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Residential Tenancy Branch