



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFT, CNC**

### Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

Authorization to recover the filing fee from the other party pursuant to section 72; and  
An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:50 a.m. to enable the tenant to call into this hearing scheduled for 9:30 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.

In accordance with Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* (“Rules”), this hearing was conducted in the absence of the tenant.

The landlord acknowledged being served with the tenant’s application to dispute her notice to end tenancy and stated she had no concerns with timely service of documents. The landlord testified that she did not serve the tenant with any of the evidence provided to me for this hearing as the landlord did not know she was obligated to do so. As the landlord’s evidence was not served upon the tenant, I will not be referring to any of it in this decision in accordance with Rule 3 of the Residential Tenancy Branch Rules of Procedure.

### Issue(s) to be Decided

Should the landlords 1 Month Notice to End Tenancy for Cause be upheld or cancelled?

### Background and Evidence

The tenant did not attend the hearing to present any evidence or provide any testimony. The landlord gave the following undisputed testimony. The rental unit is the upper unit in a single family home with a rental unit located above a lower unit currently being used by the landlord as a place of business where she practices acupuncture. The landlord and her daughter live elsewhere however the landlord frequently spends the night in the lower unit where there is a bedroom and bathroom.

The landlord testified that she served the tenant with a 1 Month Notice to End Tenancy for Cause on February 15, 2022 by posting a copy to the tenant's door. A copy of the notice to end tenancy was provided by the tenant in her evidence package. The reasons for ending the tenancy chosen by the landlord on the form are:

*The tenant or a person permitted on the property by the tenant has*

- *Significantly interfered with or unreasonably disturbed another occupant or the landlord.*
- *Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

Under "details of cause", the landlord wrote:

1. Upstairs tenants since in July last year, they moved in. I just found their loud walking, and running, talking, television yelling affect my down business special my home business need nice and quiet.
2. In the previous agreement, when she was signing the contract she begged me gave her free park an I cross out no parking period now my clients complain each time park and car accident and government have to repair sidewalk and bike line. She not suitable for parking on our land and we disagreed.
3. We had an agreement that I can come use my dryer any rain day but she cannot allow me get in and asked me give a note 24 hour and I can get in.
4. She kept send text make me hard attack went to hospital

(Reproduced as written)

The landlord testified that on February 12<sup>th</sup>, the tenant began sending the landlord messages while the landlord was trying to work. From 10:20 a.m. onward throughout the day, going on for 5 hours. The landlord was busy working and was unable to stop her work to attend to the tenant's constant messaging. The tenant would not stop sending messages even though the landlord asked her to. Eventually, the landlord called the police. The police officer advised that he could not assist in a Residential Tenancy matter and that the landlord should block the tenant's ability to send text

messages. He recommended that the only form of communication be by notes posted to the tenant's door.

The landlord argues that the tenant's constant messaging is harming her income, her life and her mental and physical well being. The landlord had to go to the hospital due to the tenant's harassment. The landlord is scared of the tenant and the tenant makes her nervous, causing sickness. The landlord had to stop working between February 14 and February 24, 2022 due to the anxiety from the tenant's harassment.

The landlord further argues that she has lost other income due to the tenant's behaviour as well. Her clients are scared of the tenant and it is dangerous to treat clients using acupuncture needles when both they and the landlord are nervous and anxious from the tenant's behaviour.

### Analysis

I find the tenant received the landlord's notice to end tenancy on February 18, 2022, three days after it was posted to her door on February 15<sup>th</sup>, pursuant to sections 88 and 90 of the Act.

Section 47 of the Act provides that upon receipt of a Notice to End Tenancy for Cause, the tenant may, within ten days, dispute it by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files the application, the landlord bears the burden to prove on a balance of probabilities, the grounds for the 1 Month Notice. I find the tenant failed to dispute the landlord's Notice on February 23<sup>rd</sup>, within the 10 days.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice.

The tenant did not attend the hearing to dispute the notice. Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to re-apply.

The tenant did not provide any testimony to refute any of the evidence provided by the landlord. The landlord provided compelling undisputed testimony to prove the reasons she provided for ending the tenancy were valid. I find that the harassment and relentless messaging to the landlord was significant and caused the landlord to suffer an unreasonable disturbance. The landlord was unable to practice her trade of acupuncture or maintain a professional practice while being constantly interrupted by the tenant's messaging. Based on the undisputed testimony of the landlord, I also find that the landlord's health was seriously jeopardized by the tenant's harassment, forcing

her to seek medical attention at the hospital and take 10 days off work due to anxiety and stress. Consequently, I find the landlord has successfully proven the reasons for ending the tenancy as stated on the notice to end tenancy, and I uphold the landlord's 1 Month Notice to End Tenancy for Cause.

Pursuant to section 55, I have examined the landlord's notice to end tenancy and I find it complies with the form and content provisions as set out in section 52 of the Act with the exception of the effective date, which is automatically corrected to March 31, 2022, pursuant to section 53. The landlord is entitled to an Order of Possession. As the effective date stated on the notice to end tenancy has passed, the landlord is entitled to an Order of Possession effective 2 days after service upon the tenant.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

#### Conclusion

I grant an Order of Possession to the landlord effective 2 days after service on the tenant. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in 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 12, 2022

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Residential Tenancy Branch