



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNC

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant's Application. Both parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

The tenant confirmed receipt of the 1 Month Notice dated January 30, 2022, which was posted on the tenant's door. I find the tenant deemed served with the 1 Month Notice pursuant to sections 88 and 90 of the *Act* on February 2, 2022, 3 days after posting.

### **Issues**

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This month-to-month tenancy began in March 2021. Both parties could not confirm the specific amount of rent, which is around \$700.00 per month.

The landlord served the tenant with a 1 Month Notice to end Tenancy on January 30, 2022 providing the following grounds:

- i) The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- ii) The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant.

The landlord testified that this is the second 1 Month Notice that has been served to this tenant during this tenancy. The landlord testified that a 1 Month Notice dated September 24, 2021 was previously served, but was cancelled by the landlord after the tenant agreed to sign an agreement to comply with several conditions, including not brandishing weapons, threatening the manager or other residents, complying with building quiet hours, not possession illicit substances on premises, and complying with all the stipulations laid on in the living agreement. The landlord provided a copy of the agreement dated October 26, 2021 in their evidentiary materials, as well as the initial warning letter served in July 2021.

The landlord testified that they had served the tenant with a second 1 Month Notice on January 30, 2022 as the tenant continues to act in a manner that significantly disturbs the landlord and other residents in the building. The landlord provided a complaint letter from another tenant dated June 25, 2021 about how the tenant is disruptive and rude.

The landlord also provided a text message from the tenant on January 5, 2022 about slipping and falling outside the building. The landlord testified that they are unable to communicate with the tenant anymore as the tenant constantly berates the landlord and uses derogatory language. In the text message the tenant calls the landlord "you fucking idiot". The landlord testified that they had attempted to work with the tenant as evidenced by the previous agreement.

The landlord testified that that they did attend the tenant's rental unit about the fire alarm after the tenant had banged on the landlord's door at 3:00 a.m. about the alarm. The landlord testified that they responded by attempting to investigate the matter.

The landlord testified that the tenant is often under the influence and acts erratically. The landlord is concerned about how the tenant has and continues to disturb the landlord and other residents in the building.

The tenant denies engaging in any illegal activity. The tenant testified that they believed the 1 Month Notice was an act of retaliation after the tenant had informed the landlord that they had slipped and hurt their back, and informed the landlord that they were planning to sue. The tenant testified that the landlord was often intoxicated, including the night the landlord had attended their rental unit during the fire alarm.

The tenant testified that the landlord has an interpersonal issue with the tenant, and that is the real reason for the 1 Month Notice.

### **Analysis**

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenant filed their application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving that they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

One of the reasons selected on the 1 Month Notice is that the tenant has engaged in illegal activity.

RTB Policy Guideline #32 speaks to the meaning of "Illegal Activity", and what may constitute "illegal activity" and circumstances under which termination of the tenancy should be considered

### ***The Meaning of Illegal Activity and What Would Constitute an Illegal Activity***

*The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.*

*The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.*

*In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.*

I have considered the evidentiary materials submitted, as well as the witness testimony in this hearing. As stated above, the burden of proof falls on the landlord to support their claim. In this case the onus is on the landlord to demonstrate that the tenant's behaviour would be considered illegal, and whether this illegal activity is serious enough to warrant the termination of this tenancy. In this case, I am not satisfied that the landlord had provided sufficient evidence to support that the tenant has engaged in any illegal activity, and I dismiss the landlord's request for an Order of Possession on these grounds.

The second reason is that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. First of all, I note the tenant's concerns that the landlord's 1 Month Notice is an attempt to end the tenancy due to the deterioration of the relationship between the parties, and what the tenant considers to be a retaliatory and meritless attempt at ending the tenancy in accordance with the *Act*.

In consideration of the evidence and testimony before me, I find that the evidence suggests the contrary. I note that this is the second 1 Month Notice served on the tenant, with the first 1 Month Notice withdrawn by the landlord after the tenant had signed an agreement to abide by some terms. As noted by the tenant, the complaint submitted by the landlord is dated June 25, 2021, before the first 1 Month Notice was served. I find that this complaint is not recent, and does not contribute to the validity of the 1 Month Notice served on January 30, 2022, over six months later. As this complaint is old, I do not find the complaint to be relevant to the landlord's application for an Order of Possession. However, I find that the landlord has demonstrated that they have been compassionate and patient in dealing with the tenant, as evidenced by the withdrawal of the first 1 Month Notice on the condition that the tenant abides by the agreed terms. The landlord had provided evidence to support that the tenant had sent the landlord messages calling the landlord a "fucking idiot". I also note that next day the tenant had sent the following message: "I'm taking this building over. I'm richer and more powerful

than anyone you've ever met". The landlord testified that they now struggle to fulfill their obligations as the tenant responds by berating them, and using derogatory terms.

The tenant submitted a video of an interaction between the two parties which took place on January 6, 2022. The tenant's belief is that the landlord was drunk, which seems to be true based on my observation of the landlord's slurred speech and choice of language. I note that I observed the landlord's demeanor and speech to be very different and coherent during the hearing, in marked contrast with the way landlord's behaviour as captured in this video. I have considered the landlord's behaviour and whether the landlord's behaviour diminishes the merit of the 1 Month Notice or the landlord's credibility. Although disturbing and unprofessional, I find that the landlord's possibly intoxicated interaction with the tenant does not justify the tenant's previous actions towards the landlord. I also note that the landlord did agree to leave when asked by the tenant in the video. As noted earlier, I find that the landlord's evidence has demonstrated patience and empathy rather than retaliation or malice on part of the landlord.

Based on the evidence before me, I find that the landlord has demonstrated that the tenant has sent threatening messages to the landlord. Although perhaps upset, I do not find the tenant's actions to be justified. As stated above, regardless of the merits of the tenant's complaints or grievances with the landlord, the question is whether the tenant's actions were significant enough to justify the end of the tenancy on the grounds provided on the 1 Month Notice. Although I sympathize with the tenant that they are not happy with the landlord's actions, I find that the landlord had provided evidence to show that the tenant has unreasonably disturbed and threatened the landlord. I find that as an onsite manager, the landlord cannot avoid interactions with the tenant, which is necessary in their role. I find that the tenant has clearly shown that they have plans to interfere with the ongoing duties of the landlord, as demonstrated by their direct message to the landlord: "I'm taking this building over." For these reasons, I dismiss the tenant's application to cancel the 1 Month Notice dated January 30, 2021.

**Section 55(1)** of the *Act* reads as follows:

**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 find that the landlord's 1 Month Notice complies with section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Based on my decision to dismiss the tenant's application and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected, effective date of the 1 Month Notice, March 31, 2021. As the tenant has not moved out, I find that the landlord is entitled to an Order of Possession.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

### **Conclusion**

I dismiss the tenant's application without leave to reapply.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant(s) 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: May 19, 2022

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Residential Tenancy Branch