



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROYAL LE PAGE COMOX BC and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call in response to repeated Applications for Dispute Resolution filed by the Tenants on February 01, 2022, and February 09, 2022 (the “Applications”). The Tenants applied to dispute a One Month Notice to End Tenancy for Cause dated January 28, 2022 (the “Notice”).

The Tenants appeared at the hearing with the Witness. The Witness was not involved in the hearing until required. C.B. and J.M. appeared at the hearing for the Landlord. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

C.B. and J.M. confirmed receipt of the hearing package for the file ending 923. C.B. and J.M. testified that they did not receive the hearing package for the file ending 918 and did not receive evidence from the Tenants. The Tenants said they did not serve their evidence on the Landlord.

Given C.B. and J.M. did not receive the hearing package for the file ending 918, this file is dismissed with leave to re-apply. However, the file ending 918 raises the same issue as the file ending 923 and this decision addresses the file ending 923. Therefore, there is no basis for the Tenants to re-apply in relation to the file ending 918.

I found the Tenants did not comply with rule 3.14 of the Rules in relation to service of their evidence. I heard the parties on whether the evidence should be admitted or

excluded. I excluded the evidence pursuant to rule 3.17 of the Rules because I found it would be unfair to the Landlord to consider it when agents for the Landlord had not received it and could not respond to it.

The Tenants confirmed receipt of the Landlord's evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence as well as the testimony of the parties and Witness. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?

### Background and Evidence

A written tenancy agreement was submitted in evidence and the parties agreed it is accurate. The tenancy started December 01, 2020.

The Notice was submitted in evidence. The grounds for the Notice are:

1. Tenant or a person permitted on the property by the Tenant has:
  - a. Significantly interfered with or unreasonably disturbed another occupant or the Landlord.
  - b. Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.
2. Breach of a material term.

The Details of Cause section of the Notice states:

On January 7, 2022 the occupant(s) girlfriend and friends pushed/assaulted another occupant/guest coming out of the front entry of the building because they would not leave the door open for them. Luckily there was snow on the ground with somewhat of a snow bank to break his fall on the concrete walkway. These tenants have been warned that violence will not be tolerated from them or any of their guests per the Warning Letter issued on May 12, 2021, which is also attached to this notice. As this is the second act of violence associated with these tenants the landlord has requested that this tenancy end immediately.

The landlord also wants to remind these tenants that their girlfriend and friends that were involved in this act of violence are banned from entering the building or the property going forward.

The parties agreed the Notice was served, and received by the Tenants, on January 28, 2022.

In relation to the grounds for the Notice, C.B. and J.M. testified about a first incident of violence involving the Tenants which occurred in May of 2021 and led to the Tenants being issued a warning letter. C.B. and J.M. further testified about a second incident of violence which occurred on January 07, 2022, and involved associates of the Tenants. The January 7<sup>th</sup> incident is described in the Notice and set out above.

The Tenants testified that they do not know one of the individuals involved in the January 7<sup>th</sup> incident. The Tenants testified that the alleged aggressors in the January 7<sup>th</sup> incident were not invited to the building by the Tenants and are not welcome at the rental unit or the building. The Tenants testified that they were not expecting company on January 7<sup>th</sup> at the time the incident occurred, and they did not know about the incident until they were served the Notice.

The Witness was directly involved in the January 7<sup>th</sup> incident and testified about the two alleged aggressors trying to enter the building. The Witness testified that the two alleged aggressors did manage to enter the building and took off to the second floor, a different floor than the rental unit is on.

In reply, C.B. and J.M. confirmed the Tenants were not present for, or directly involved in, the January 7<sup>th</sup> incident. C.B. and J.M. pointed out that the Tenants are responsible for the actions and behaviour of their guests. C.B. and J.M. testified that the two aggressors are at the building constantly and one is Tenant F.P.'s girlfriend.

The Landlord submitted a Tenant Maintenance / Request Form outlining the January 7<sup>th</sup> incident as well as the warning letter sent to the Tenants May 12, 2021.

### Analysis

The Notice was issued pursuant to section 47 of the *Act* and the following subsections:

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...

(h) the tenant

- (i) has failed to comply with a material term, and
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so...

The Tenants had ten days to dispute the Notice pursuant to section 47(4) of the *Act*. There is no issue that the Tenants received the Notice January 28, 2022. The Tenants disputed the Notice February 01, 2022, within time.

Pursuant to rule 6.6 of the Rules, it is the Landlord who has the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Based on the Details of Cause section of the Notice, and the testimony of C.B. and J.M., I find the Notice was issued because of the January 7<sup>th</sup> incident.

I find the Tenants were not present during, or directly involved in, the January 7<sup>th</sup> incident because C.B. and J.M. acknowledged this. I find the January 7<sup>th</sup> incident involved two people who may be associates of the Tenants. The Tenants are responsible for the actions and behaviour of their guests to the rental unit or building.

However, there is insufficient evidence before me to find that the two aggressors involved in the January 7<sup>th</sup> incident were guests of the Tenants at the time. The Tenants denied that they had invited the two individuals to the rental unit or building and there is insufficient evidence before me that they did. It is not enough that the two aggressors may be, or are, associates of the Tenants. The Tenants are not responsible for their associates' actions and behaviour if the Tenants did not invite them, or allow them, on the property. In coming to this decision, I have considered the fact that the January 7<sup>th</sup> incident did not occur at or in the rental unit, but outside the building in a location accessible to anyone, and only in the building to the extent that the aggressors were able to gain access to the building after some involvement with two other occupants of the building. I do not find a sufficient link between the two aggressors and the Tenants to find the Tenants responsible for these individuals' actions and behaviour.

Given the above, I find the Landlord did not have grounds to issue the Notice because of the January 7<sup>th</sup> incident. Given the Landlord did not have grounds to issue the Notice, the Notice is cancelled, and the tenancy will continue until otherwise ended in accordance with the *Act*.

### Conclusion

The Notice is cancelled, and the tenancy will continue until otherwise 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 *Act*.

Dated: May 30, 2022

---

Residential Tenancy Branch